ACHIEVABLE NATIONHOOD

A Vision Document on Resolution of the Jammu & Kashmir Conflict

Jammu Kashmir People's Conference

Sajad Gani Lone

In time past, we were;

In time future, we shall be;

Throughout the ages, we have been.

- Lal Ded, Lala Arifa

A warrior without a horse is a father without a child;

An oar without a boatman is an arrow without its head;

A disciple without a preceptor is a collar without a yoke.

The barber without a razor and the carpenter without adze,

A Sheep without wool, and seed that do not sprout,

Are bound to suffer a loss, as a country without a leader. -

Nund Rishi, Sheikh Nurudin Noorani

We shall meet again, in Srinagar,

by the gates of the Villa of Peace,

our hands blossoming into fists

till the soldiers return the keys

and disappear. Again we'll enter

our last world, the first that vanished

- Agha Shahid Ali, "The Country Without A Post Office"

In loving memory of my father,
Shaheed-e-Hurriyat Abdul Gani Lone

Shaheed-e-Hurriyat Abdul Gani Lone
1932 – 2002

Abdul Gani Lone, a visionary thinker and founder of Jammu Kashmir People's Conference, laid down his life for the people of Jammu & Kashmir. He was assassinated on May 21, 2002 by cowardly assailants while attending the death anniversary of another Kashmiri leader, Mirwaiz Maulvi Farooq, who was assassinated on exactly the same day in 1990.

For the people of Jammu & Kashmir who have persisted in an epic of struggle and sacrifice and who have endured the pain and travails of life in a conflict zone. I especially dedicate this work to all those people, whatever their ideology, who lost their lives in the conflict to different sources of violence. A just and lasting peace would perhaps be the biggest tribute to all those who lost their lives. In remembering them, we can unite them by showing compassion to their heirs, irrespective of their political ideologies.

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Preface

I have long felt the need for a sincere analysis of the J & K conflict and for an articulation of its resolution from a J & K perspective. The people of J & K have both a responsibility and a right to put forward a vision for their future. Having persisted in an epic of struggle and sacrifice and having endured the pain and travails of life in a conflict zone, being recognized and heard is the least the people of J & K deserve. At a time when new opportunities for conflict resolution seem possible, the continued absence of an informed J & K articulation on conflict resolution will perpetuate the intractability. In pursuit of our aspirations, we must analyze all the dimensions involved and put forth a vision that is both explicit and achievable. This entails a dynamic approach involving the comprehension of the realities that confront us, a process of demystification of the web of false perceptions and the courage to introspect. The present vision document, which draws on my experience and a concerted academic problem-solving exploration, is my humble attempt to do so.

The sense of urgency to arrive at a clear articulation of a J & K perspective on conflict resolution became particularly stark during my meeting with Prime Minister Dr. Manmohan Singh in January 2006. Our party was invited by Dr. Manmohan Singh for a dialogue on the J & K conflict. During the course of the dialogue, I introduced a particular approach for resolution of the J & K Conflict. Dr. Singh responded to my ideas with an offer to have a second round of discussion the following day. He proposed that I sit down with his team late into the night and develop the concept further. Regrettably, I had to very humbly express our inability to accept his gracious offer as I felt that we had to do more homework in order to do justice to such an important exercise. I conveyed to Dr. Singh that we would get back to him once we had prepared a thorough document on our perception of the J & K conflict and its resolution. The thought of a J & K leader purporting to represent some section of the people of J & K having to opt out of a successive chance at dialogue because of

inadequate homework has since consumed me with guilt. While I had long felt the need for it, it was at that moment that I resolved to sit down and prepare a vision document once and for all.

I had started with a particular set of ideas in mind but the direction and depth of this document truly evolved out of a process of education, analysis and introspection. The overriding purpose of "Achievable Nationhood" is to open a new discourse and debate in J & K so that a consensus may evolve. This document is by no means exhaustive and is rather put forth to introduce new ideas, critical thinking, a set of clear criteria, and an agenda for public discourse in J & K. The real value of this document will be in the quality and depth of discourse that we are able to generate amongst the people of J & K and the degree of consensus that such a discourse results in.

It is with great hope that I humbly submit this vision document before the people of J & K and urgently propose that we apply our hard-earned learning curves towards the future and enter collectively into a process of visionary introspection. If we do not join in such a discourse to evolve a consensus now it will be an abdication of our responsibilities towards each other and to our future generations. Our collective sacrifices must now be empowered with a collective vision for the future.

Simultaneously, I hope that both India and Pakistan will seriously consider and engage on the concepts put forth in this document and prepare themselves to accommodate a J & K consensus on the resolution of this conflict. I hope that 2007 will be a year when we see a demonstration of statesmanship and vision on the part of India and Pakistan so that the hitherto elusive journey from the tragic and regrettable state of affairs finally begins.

Sajad Gani Lone
Jammu Kashmir People's Conference
December 9, 2006

Acknowledgements

The inspiration to prepare this document predates my entry into politics. My late father encouraged me to prepare a document which could articulate the aspirations of the people of J & K and translate them into an achievable vision. My father always set high standards in what he expected from me and all too often I failed to reach them. But my father invariably refused to give up on me or let me give up on myself. Somehow, he had an unflinching belief in my potential despite the many reasons I gave him to doubt it over the years. In spite of its inevitable deficiencies, this document and all the heartfelt effort I invested into it represents my attempt to make my father proud. I wish he was alive to see it.

I thank my mother for all her loving encouragement and for setting a living example before my eyes of the truth of human resilience. For me, she is a living reminder of what my father stood for.

I wish to express my love and appreciation for my wife Asma. I have been a terrible husband in these past few months - absent and too busy to call at times. But she tolerated me with grace, barring a few instances. Asma contributed greatly to my work by convincing me to take a broader approach to problem-solving. The chapter on empirical evidence is the outcome of her submission that I study conflicts in other parts of the world with an aim towards gleaning certain lessons learned and best practices that are essential in any conflict resolution process.

My party people stood by me and allowed me to go on a long leave to prepare this document. I have been able to gather insights from them about the conditions, expectations, aspirations, problems and moments of sheer helplessness that many of our people face. Perhaps many of them did not grasp the scope and complexities of the task I had undertaken. Yet every party member would frequently enquire about the progress of the vision document and would express the high level of expectation they had of a work undertaken from the son of their beloved leader. Their expectations sparked in me a passion to persist in this weighty undertaking.

In preparing this document, Mohammed Yusuf, Syed Gulfam, Bilal Arizoo, Iqbal Lone and Arshad Mir have played a very significant role. They carried out a variety of tasks ranging from collection of data to typing. My party colleagues Hafeezullah Makhdoomi, Engineer Rashid, Rashid Mehmood and Amin Indrabi (Pulwama) were in constant touch and helped me to delve into a deeper understanding of the J & K Conflict. Ershad Mehmood (IPS, Islamabad) provided valuable academic and moral support.

A major portion of this document was penned down in the alpine meadow of Gulmarg. The idyllic beauty of Gulmarg and the serenity it provided fuelled my imagination and as such deserves acknowledgement. I would like to also thank the staff and management of Hotel Highland Park for affording me a home away from home.

My father-in-law, Amanullah Khan Sahib, provided the moral support I needed and it goes to his credit that despite having strong ideological views he never tried to influence my analysis. My mother-in-law too would often call from Pakistan and nudge me ahead with her kind support.

My darling nieces Marriyah and Adha visited me in Gulmarg and their innocent questions and playful antics were a refreshing break from the rigours of academics and a respite I always used to long for. Emaad and Adnan my twins aged two also visited me in Gulmarg and predictable of their age not only inflicted heavy damage on my paper work but even threatened the hotel property. Preparing this document has meant being an absentee father and I will try my best to make up for the lost time. I have to add that Mariyah, Adha, Emaad and Adnan were a constant motivation for me. It was in search of a better future for them and all our nation's children that I embarked on a process of introspection.

I thank my elder sister Shabnam for being my loving sister. During one of my absences, my son Emaad fell ill and it was my brother Bilal who took care of him. This single event put an end to a painful period of estrangement that we both inflicted on ourselves. Rediscovering a true friend in my brother is the greatest thing that could have happened to me. I am happy to have my sister, Bilal's wife Farhat, back in my life. I would like to thank my friend Dr. Arshad Bhat (Dubai) who discussed this project with me just before I started it. I would like to thank all my friends, too many to be named, for always being there for me.

Glossary

Typical of conflicts around the world, names of places can be very contentious. It is difficult to find an acceptable language in conflict resolution. The differing perceptions of nomenclature have become conclusive indicators of conflict.

The conflict in J & K is referred to as Kashmir dispute, Kashmir issue, J & K issue, J & K dispute by different parties in the conflict. India defines part of J & K under Pakistani control as Pak Occupied Kashmir, while Pakistan defines part of J & K under Indian control as Indian Occupied Kashmir. A more temperate form used by academics in the two countries is Indian Administered Kashmir and Pakistan Administered Kashmir.

In our document we have tried to stay away from the conflicting versions of nomenclature and tried to chart a different course.

J & K	J & K means the territory depicted by the undivided state as it existed prior to 1947.
J & K M	means territory under Pakistani control.
J & K S	means territory under Indian control

In some places there is a switchover from J & K S to J & K M to J & K within one sentence.

Introduction

& Executive Summary

The origins of the J & K conflict can be traced back to 14 and 15, August, 1947. On this day two new independent sovereign states of India and Pakistan were created. The dispute over the political future of J & K has persisted till date.

The objective of our document is to try and draw on the multiple dimensions of the conflict in the build up to the evolution of a model. The document is presented in five parts viz. historical perspective, psychological and reality variables, current scenario, empirical evidence and sections pertaining to the evolution of our model viz. the eclectic model.

Historical Perspective

In 1947, part of J & K ended up under Indian administration (J & K S) and a part ended up under Pakistani administration (J & K M). Since 1947 both the countries have tried to legalize the hold on the parts under their administration, while keeping the claim for the other partly alive. Diplomatic means to keep the claim for the other part alive meant advocacy at the United Nations, while the violent means meant three wars resulting in decades of hostility between the two nations. On the internal front both the countries managed a depleted power sharing structure with the parts of J & K under their administration. Institutions, individuals and illegality have been the recurring theme in attempts to legalize the hold onto the parts under their administration.

In 1989, a mass-based people's movement, including the element of armed struggle, erupted in J & K S against the unresolved status of J & K demanding the re-unification and independence of J & K. The movement was a culmination of sorts in a decades-long epic of struggle and sacrifice by the people of J & K. The movement is still on and in the process people in J & K, most especially in J & K S, have rendered exemplary sacrifices. 1989 in essence marks the end of history and relegates its role to

a witness of a dispute. Post 1989 the conflict has revolved around the struggle and the aspirations of the people of J & K.

While the two countries continue to display obsession with J & K- "the land", the concept of an independent homeland emerged as the majority sentiment reflecting aspirations for J & K- "the land and the people". Initially perceived as a utopian aberration, the concept of an Independent homeland has transformed into a political ideology with mass acceptance.

The history of the J & K conflict may not be very relevant in terms of conflict resolution, but it provides deep insights into conflict variables. Attempts to learn history transformed into lessons of unlearning history. Analysis of history presented in the document provides conflicting perspective to the traditional versions of history. The outsourcing of aspirations by the J & K leadership, the merits or demerits of the exit of the Maharaja, the dynamics of erosion of the power structures, the developing of leaders for J & K by India and Pakistan and the static dimensions of history represent the static link between the past and the present. Of particular importance is the barter process where in leaders of J & K were given roles in exchange for loyalties for India or Pakistan and the consequent division of the leadership of J & K into pro India and pro Pakistan camps at the cost of the pro J & K camp. The tradition of developing leaders for the state of J & K, rather than identifying leaders in the state of J & K started in 1947 and sadly persists and exists even today.

In linking up the present with the past, perhaps the most important conclusion is that the historical perspectives of both India and Pakistan are far less "relevant and realistic" in the context of the struggle and the sacrifices rendered by the people of J&K. The current era of dialogue, negotiations, and flexibility is a derivative of the struggle and not of history. The struggle has made the historical context of the dispute largely irrelevant and transformed the context from historical to sacrificial. The reference point in the resolution process would have to be the sentiment of the people who revived an issue which was presumed to be dead, by sheer dint of sacrifices, pain and sufferings.

Psychological and Reality Variables

The J & K conflict has often been viewed or analyzed in a political perspective, in isolation of the psychology inherent in the issue. The psychology of the issue makes the important distinction between aspirations and grievances. Aspirations of the people of J & K are a measure of the political sentiment. They cannot be passed off as grievances. Grievances have micro parameters and could pertain to incompatibility

with some aspect of the political system; aspirations have macro parameters and pertain to incompatibility with the political system itself. The conflict in J & K is a result of unfulfilled aspirations and not unfulfilled grievances.

The concept of psychological barriers to flexibility is evaluated by defining the concepts of sentiment, social sanctity of violence, sanctity of sacrifices, concept of betrayal, perceived futility of dialogue and politics of expectations. A derivative of these concepts is the concept of psychological captivity, which we see as a way of expressing the cumulative sum of the impact of the psychological barriers. These psychological barriers have all reinforced each other to produce a societal mindset which is psychologically captive to these concepts. These concepts are deeply embedded in the psyche and releasing the societal mindset from the psychological captivity would mean comprehension of the intensity of these psychological concepts and levels of psychological deliverance at par with the levels of intensity.

The reality variables are evaluated by defining concepts of generational contours of the dispute, the clout factor, violence and politics, transformation of society, ending violence or establishing peace and reality in its various shades. The objective is to blend sentiment with reality. While the psychological factors have the propensity to wander far off from reality, explicit enumeration of realities defines the constraints of the scope of psychological deliverance. Transformation of the 'psychological barriers to solution' into 'psychological facilitators to solution' would mean finding an optimal trade off between psychological and reality variables.

Empirical Evidence

A blend of the Hong Kong Model in terms of independence and powers of the government of Hong Kong, the mode of negotiations rooted in consent and inclusiveness in the Good Friday agreement, the evolution of an irreversible, interdependent relationship between The British, The Irish Republic and The Northern Ireland in The Good Friday Agreement and the example of the Indo Nepal Model could provide an inspiring and stimulating setting for resolution and peace in J & K.

Apart from the various models analyzed, we sifted through a host of other peace processes and Agreements. The areas of unanimity are the academically institutionalized imperatives essential in the success of a peace process. Involvement of armed groups, all inclusive process, multi party format, need for going beyond elites and engaging the public, respect for human rights, rehabilitation of victims of violence, reverence for sacrifices, demilitarization, decommissioning-demobilisation-

reintegration, truth commissions, importance of process of implementation of an agreement, international intervention or facilitation, existence of conflict economics, conflict incentives, exhibition of statesmanship qualities by the leadership, sacrificing of national interests in exchange for peace, the role of civil society and the redefined contours of sovereignty are some of the areas which could provide a deeper insight into the successful resolution of disputes.

The leadership variable is perhaps the most important in the conflict resolution process. Seemingly most irresolvable disputes have been resolved, while seemingly resolvable disputes stand unresolved. Our perception is that "Nothing is resolvable and nothing is irresolvable in the world of conflict resolution". The dividing line between conflicts being resolvable and irresolvable is the presence or absence of statesmanship, vision and courage of the leaderships to make the distinction between the "desirable and achievable".

Current Scenario

The period from January 2004 onwards is perhaps the most prolonged period of civilized interaction between the states of India and Pakistan, without taking a break for resorting to the primitive. The net result so far in terms of steps towards resolution can be defined by the emerging postures of flexibility by India and Pakistan. Pakistani President General Musharraf has taken the lead by being able to formulate a policy which indicates a perceptible shift, away from the traditional ideological perspective of the Pakistani state. The Indian state has responded but perhaps not in equal measure. While the Pakistani state has given indications of what could be acceptable to it, the Indian state has given explicit indications of what is unacceptable to it. It has so far refrained from giving indications of what is acceptable to it. There is, however, continued ambiguity over the levels of institutional sanctity to the emerging Indian and Pakistani postures of flexibility.

The current espoused Indian and Pakistani positions of flexibility should have meant conflict transformation. However the dispute seems to be firmly stuck in an irresolvable state. The approach to resolution is still captive to a mindset, characterized by belligerence, bellicosity, rancour, overreaction to violence and sustained belief in eternal intractability. The yard stick for success in the Indian and Pakistani bureaucratic and political institutions still seems to be the capability to impede resolution rather than to facilitate resolution.

The peace process suffers from a fatal overdose of bilateralism. Sections of the leadership of J & K S have been engaged at different levels by the states of India and Pakistan. But the engagement by no means constitutes the institutional involvement of the leadership of J & K. The involvement has been largely ornamental and selective. The variables of who to invite, when to invite, whether to invite, why to invite, why not to invite- are decided by India and Pakistan. The regrettable historical legacy of J & K leaders being developed by either India or Pakistan has not facilitated resolution in the past and is unlikely going to facilitate resolution in the future. The J & K leadership would also have to understand that there is no sole representative in J & K and any clamour for sole representation of the people of J & K by any section or thought of leadership in J & K is bound to facilitate the war of attrition within the leadership in J & K and institutionalize the exclusive role of India and Pakistan in deciding the future destiny of the people of J & K. The merits of an all inclusive process need to be comprehended.

Some important CBMs have been implemented. The Srinagar- Muzafarabad bus service in particular had tremendous psychological scope to herald change. Instead of presenting it as a sacrificial product and attributing the opening up of this travel route to the pain, sufferings and sacrifices of the people of J & K, it was attributed to the statesmanship of the leaders of India and Pakistan. The service was expected to act as a psychological facilitator for flexibility and strengthen proponents of dialogue and negotiations. With the psychological component hijacked the bus service failed to have any impact on the ground.

The problem with the CBMs is that they seem to bear the typical signature of an external facilitator. The concept has been conceptualized in isolation of the psychological variables and the local realities. Per se they are excellent concepts but suffer from the problem of implementing the "right thing at the wrong time and through wrong hands".

Prime time slots are still utilized by the electronic media of both the countries to market demonized and inhuman versions of each other. If history is in the making, evolving a consensus among people and desisting from negative portrayal would have been a compulsion. Regrettably the continued malicious propaganda carried out on the electronic media indicates that resolution of the conflict might be still a very long way.

Evolving the Eclectic Model

The model that we want to evolve is an attempt to draw on to the various dimensions of the dispute and facilitate proportionate access of all the relevant dimensions into the resolution process. Too much focus has been put on the visible, political dimensions of the dispute while the psychological and other invisible dimensions have been largely ignored. These seemingly passive aspects represent the psychological and invisible dimensions of the dispute and may not be quantifiable in terms of claims, but have strong psychological ramifications for any process aimed at resolving the dispute. The model is an attempt to incorporate these invisible dimensions of the dispute into the resolution process, along with the other more visible dimensions of the dispute. The model is by no means exhaustive and is expected to evolve. The treatment is deliberately abstract with the motive of partly shifting the exclusive focus, from the limited arena of competing claims of the parties, to the vast canvass of latent realities.

We would have to draw on all these latent realities and see whether unanimity can be achieved at a point which is well short of the espoused target of each party. There is an implicit presumption of flexibility by each party and a movement inwards from the stated positions. This implicit presumption rules out the stated positions of status quo, merger with Pakistan, merger with India and complete Independence.

The model starts from a reference point and evolves within the constraints of the concept of sentiment and variance in sentiment. We believe that a reference point inspired by the majority sentiment is the independent homeland model for J & K. The concept of independent homeland will be diluted when we try to address the competing claims of New Delhi and Islamabad, the ground realities of the issue and the variance in sentiment. A point of convergence will have to be found out where the extent of dilution of the independence model is acceptable to the people of J & K and at the same time is acceptable and affordable to New Delhi and Islamabad.

The eclectic model is an evolutionary model rather than a devolutionary model. Devolution would mean a process wherein New Delhi or Islamabad devolve some quantum of powers towards the two parts of J & K. Evolution would chart a different direction and start by making the independence model as the reference point. The direction that the process takes is as important as the result of the process. This summarises the psychology of the "what and how" of J & K conflict. "What" we offer to the people of J & K is as important as "how" we offer it to the people of J & K.

The process of resolution has to come across as an inclusive process involving the people of J & K and showing due reverence to the sacrifices rendered by the people of

J & K. This makes the "context of the contents" of any solution as important as the "contents". The context represents "how", while the contents represent "what". The context is a mode of incorporation of the abstract factors into the process of resolution and defines the conditions under which the contents would evolve.

While there is a perception in New Delhi that the clock cannot be turned back, our model differs and holds the perception that reality will ultimately find its equilibrium. India, Pakistan or the people of J & K can only facilitate or impede the process and make it painful or painless.

The Concept of Context

The context of the model provides the settings and the conditions under which the eclectic model would evolve. The sentiment sets the starting point and the variance in sentiment sets the constraints for the evolution process. The context is a mode of incorporation for the concept of sanctity of sacrifices and a host of other invisible dimensions into the resolution process. These are listed below.

Sentiment, Variance in Sentiment, Reference Point – The Majority Sentiment, Process of Accommodation, Sanctity of Sacrifices, Psychology of Nomenclature, Psychology of Evolution and Devolution, Involving Armed Groups, Social Stigmatization of Violence – Post Solution, Generating Consensus among the Peoples, Divided J & K Leadership, Evolving Consensus among Sections of Leadership in J&K, Identifying Leaders or Developing Leaders in J& K, All Inclusive Process, Aligning the Current Peace Process, Institutionalization of the Dialogue Process, Concept of Consent, Institutional Dichotomy, Economic Agendas of Conflict, Opt Out Option – Ethnic Accommodation, Human Rights, Truth and Reconciliation Commission, Return of Displaced Persons, Release of Political Prisoners, Status of Ex-Militants, Rehabilitation of Victims of Violence, Making J & K a Peace Zone – Demilitarization.

The Concept of Reference Point- Independent Homeland, and the Concept of Sentiment and Variance in Sentiment

We first create an independent homeland model. This model is aimed at the conceptual transformation of the sentiment- an abstract concept, a measure of aspirations into a legally legible and valid document, in conformity with the international law. The eclectic model addresses the Indian claims, the Pakistani claims and the claims of unification pertaining to the two sides of J & K. The claims are a

derivative of the sentiment and territorial control and are accommodated by creating overlaps on to the reference point model of independent homeland. Each overlap would accommodate claims and dilute the independence of the model created above. The cumulative sum of the overlaps and the resultant evolved model would be the eclectic model.

Contents of the Eclectic Model

The evolution process has produced five overlapping relationships. A redefined relationship between India and J & K S, a redefined (at par) relationship between Pakistan and J & K M, a new relationship between J&KM and J & K S, a new relationship between Pakistan and J & K S and a new relationship between India and J & K M.

New State of Affairs

The new state of affairs represents the context and the contents evolved in the eclectic model. The contents of the eclectic model are compatible only with the context in which they have evolved. The new state of affairs is a new set up of civilized and dignified coexistence evolved on the principle of variance of sentiment, between India, Pakistan, J & K S and J & K M. It is based on the principle of the sovereign right of the states of J & K S and J & K M to exercise sovereignty over all matters within their territorial jurisdiction, while allowing the exercise of sovereignty by India and Pakistan over certain subjects. It is in essence the synergistic sharing of sovereignty. New power sharing structures are evolved between India and J & K S and Pakistan and J & K M. The interstate relationships evolved allow formal relationships between J & K M and J & K S, India and J & K M and Pakistan and J&KS.

Relationship between J & K S and India

In the new state of affairs the concept of internal sovereignty, economic sovereignty is far more independent than the prevalent concepts of autonomous regions, self rule, internal autonomy envisaged in the academic literature in international law. The new state of affairs, apart from independence afforded to provincial governments in traditional subjects in internal administration also covers areas like communications, civil aviation, Income tax, customs and other duties and levies, participation in international agreements in pursuit of economic objectives etc.

The competence of the Indian state is confined to defence, foreign affairs and currency. J & K S would be vested with executive, legislative and independent judicial powers including final adjudication and full economic sovereignty. The government of J & K S would be a single political authority on all matters pertaining to the internal matters of the state and have complete internal independence to deal with its internal affairs. J&KS would be a separate custom territory with its own corporate laws, customs, banking rules and regulations, tax structures and all other economic laws.

In the new state of affairs, subject to the principle that foreign affairs are the responsibility of the state of India, representatives of the state of J & K S could participate, as members of the delegation of the government of India, in negotiations at diplomatic level directly affecting the state of J & K S. The state of J & K S could maintain and develop relations and conclude and implement agreements with states, regions and relevant international organizations in the appropriate fields, including economic trade, communications, services, tourism, cultural, educational exchanges, scientific cooperation, sporting activities, etc. - provided that such agreements do not cause prejudice to the authority of Indian Government and is compatible with the new state of affairs. In the new state of affairs, J & K S may depute representatives to engage in relations with these states, regions and relevant international organizations and conclude and implement agreements on these issues. The Indian government would facilitate these activities since the deputed representatives of J & K S would be accredited as part of the diplomatic missions of India. These activities would be reported to the Indian state for reference.

In the new state of affairs, subject to the principle that foreign affairs are the responsibility of the state of India, the state of J & K S will have the right to engage on its own with the state of Pakistan and the state of J & K M within the parameters of the respectively "defined relationships".

In the new state of affairs, the long term objective would be to convert the entire territory of the state of J & K into a neutral, peace zone. The long term objective would be to demilitarize the state of J & K. This can be achieved with the concurrent decommissioning of weapons of the non state armed groups and achieving an enabling environment for demilitarization. As conflict transformation proceeds and once peace has taken hold, a new security paradigm would emerge within the region and new structures would sustain it.

The government of J & K S would complement the Indian role in the defence of the borders of the state. The number of troops required to defend the borders in the

state of J & K S would be mutually agreed between the state of J & K S and the state of India. Indian contingents in the state of J & K S would not exceed the agreed numbers. Indian forces and armaments would be redeployed to agreed locations and adjusted to agreed levels, and any forces and armaments in excess would be withdrawn.

J & K S would not put its territory at the disposal of the Indian state for any hostile actions against the state of Pakistan.

Relationship between Pakistan and J & K M

In the new state of affairs, the same principles of governance would apply to the relationship between Pakistan and J & K M.

Relationship between J & K M and J & K S

The J & K Economic Union

In the new state of affairs, two sub state entities with different sovereignty linkages and constitutional freedom for an independent economic system would jointly pool their respective economic independences to form an economic union. The economic union suggested is at the far end of the types of economic integration currently in practice. This would mean encompassing the entire range of other forms of economic integration i.e. free trade area, custom union, common market. These concepts could however be part of a phased approach leading to full economic union.

The concept of a J & K economic union is a process of unification of the two parts of J & K by producing a "single economic entity" out of "two distinct geographical and political sub-entities of J & K S and J & K M ", having separate sovereignty linkages with two separate sovereign entities of India and Pakistan. A single economic entity would mean free flow of capital, trade, services, labour. Economic operations across LOC and the removal of barriers to movement are perhaps the most profound visible indicators of change- psychological unification. The "J & K Economic Union" would be an economically boundary-less J & K. The economic union of the state of J & K would be a separate custom territory. Internal barriers to trade would be removed while external barriers to trade would be harmonized. Both Indian and Pakistani currencies would be the legal tender. Goods of J & K economic union origin would have a non reciprocal duty free access into Indian and Pakistani markets.

Joint Immigration Control for Movement of Residents of J&KM and J&KS within J & K

In the new state of affairs, travel between the two parts of the state of J & K for the state subjects of the two parts of the state of J & K would be a birth right. A visa-free regime would exist for foreign nationals who are persons of J&K origin (PJKO).

Joint Management of Natural Resources

In the new state of affairs, a joint strategy would be pursued to protect the interests of the state of the J & K in matters pertaining to the utilization and sharing of natural resources

Sector Specific Cooperation, Coordination and Consultation

In the new state of affairs, the two parts of the state of J & K would coordinate in various sectors outside the domain of the economic union. They would endeavour to coordinate, harmonize their policies through legislation, or through agreements, or through consultations and evolve joints standards, wherever appropriate in the selected sectors.

Relationship between Pakistan and J & K S

Pakistan and J & K S would have the right and capacity to enter into an independent relationship with each other. The contours of that relationship could be defined mutually between the states of India, Pakistan and the two parts of J & K. The relationship could mean exclusion of some sectors. Pakistan and J & K S would enter into a relationship in various spheres in a manner, not prejudicial to the interests of the state of India. The relationship between Pakistan and J & K S has been modelled on The Indo Nepal Treaty of Peace and Friendship, 1950. The state of Pakistan, as a token of appreciation for the historical bond exhibited by the people of the state of J&KS would on a non reciprocal basis give the state subjects of the state of J & K S, in its territory, national treatment with regard to participation in industrial and economic development of its territory and would grant concessions and contracts relating to such development. It would also extend on a non reciprocal basis, to the

state subjects of the state of J & K S in its territory, the same privileges that it gives to its nationals in matters of residence, ownership of property, participation in trade and commerce, employment and other privileges of similar nature. J & K S would reciprocate to an extent as defined by the levels of independence of the government of the state of J&KS and subject to Indian interests. Pakistan and the nationals of the state of Pakistan would have the opportunity to invest, trade, setup business in the J&K economic union at par with that of the Indian state and the nationals of the Indian state. Pakistan could provide aid and funding to development and infrastructure projects, set up educational institutions, set up hospitals and enter into a range of other similar activities in the state of J & K S.

Relationship between India and J & K M

Similar principles would apply to the relationship between India and J&KM.

Joint Institutions

New institutions would have to be created to coordinate the new evolved relationships between J & K S and J & K M, Pakistan and J & K S and India and J&KM. These institutions would bring people with executive and legislative responsibilities together in the form of three joint institutions respectively.

Consent

Any solution evolved would have to be put before the people of J & K for ratification. The process of ratification adopted in the Good Friday Agreement could be emulated. This would mean ratification in J & K M, J & K S and all-J & K ratification.

Role of Economics Post solution

The implementation phase is perhaps the most precarious phase in the process of conflict resolution. Economics has a central role in the post solution phase, in our model. The role of economics in the eclectic model stretches far beyond the domain of traditional economics and straddles across the political and psychological aspects of the conflict. The concept of an economic union as envisaged in our model impacts

psychological and political spheres and the economic spheres. There is an economic outcome, but there is also a political outcome and a psychological outcome.

The economic impact of an economic union confined to two parts of J & K is not going to be very high. The potential for trade volumes between the two parts of J & K is likely to be very limited. At the very best it would mean increase in trade opportunities of traditional products of J & K S. The combined economic clout of both the parts would not mean significant changes in employment, industrialization or investment. Confining the concept of an economic union to two parts of J & K at best serves limited political and psychological objectives.

The post solution role of economics envisages the transformation of the conflict area away from the current economic dependence to economic independence. The transformation is essential to sustain a political solution short of the target. The whole concept of an independent economic system revolves around the concept of free trade. If the J & K economic union is to replicate laws in India or Pakistan, it loses its economic relevance. Our long term concept of economic union is defined by a trade friendly area with low or no custom duties, liberal banking and finance laws, extremely low levels of taxation, liberal laws on communication, publishing, civil aviation and other relevant sectors, with integrated and internationally acceptable levels of infrastructure.This would mean a concept J & K economic union as a nodal trading and production base, designed to service both the Indian and the Pakistani markets.

Sovereignty Context

Apart from the legal concept of sovereignty in international law, the concept of sovereignty in J & K is also a psychological concept. Usage of the evolving-multidimensional, divisible, concept of sovereignty in a solution would be a psychological indicator of change.

In the context of the J & K conflict- we have two sub state entities of J & K S and J & K M and two states of India and Pakistan. There is a need to be able to trace a solution to the J & K conflict on the sovereignty map- a solution which enables India and Pakistan to exercise sovereignty over defined subjects in J & K and constraints the exercise of sovereignty of the Indian and Pakistani state over defined subjects in J&K. The concepts of internal sovereignty of J & K (enabling J & K, constraining India and Pakistan), external sovereignty of J & K (enabling India and Pakistan and constraining J & K), and economic sovereignty of J & K (enabling J & K, constraining India and Pakistan) all could become permanent or interim parameters of the concept of shared

sovereignty. This means unbundling of different attributes of sovereignty and according specific attributes of sovereignty to J & K. These concepts need to have the formal, legal endorsement of the Indian and the Pakistani state. The psychology of the concept of sovereignty is a relevant variable. Redistribution or devolution of power without reference to the sovereignty context is unlikely to have the same level of psychological deliverance.

The eclectic model attempts to redefine the macro attributes of sovereignty in a micro form of set of powers, claim-rights, liberties, immunities and independence of the government of J & K. The model is finally evolved out of realistic accommodation and redistribution of specific attributes of sovereignty between India, Pakistan, J&KS and J & K M within the constraints of sentiment and static territorial dynamics. Contents of a model arrived through evolution and defined in the context of sovereignty provide peace makers with much greater advantage, than similar contents arrived through devolution and without a context of sovereignty. Furthermore, an earned sovereignty approach will put the various phases in implementation in sync with the conflict transformation process.

It is our belief that the eclectic model and the new state of affairs that it seeks to bring about is achievable nationhood for the people of J & K.

Chapter 1

Historical Perspective

The External Dimension

•Chronology of Events •Status of International Observers

The Internal Dimension

•India – J & K S ►Chronology of Events •Pakistan – J & K M ►Chronology of Events

The Struggle

Learning and Unlearning History

•Struggle or History •Outsourcing of Aspirations

•Context of Erosion (J & K S)

►The Exit of Maharaja

•Dynamics of Erosion (J & K S)

►Institutions, Individuals, Illegality

•1975 Accord (J & K S)

►Negating a Struggle

•Power Sharing Structure (J & K M)

►No Room for Erosion- Institutions, Illegality

•Static Dimensions of History

Historical Perspective

The origins of the Kashmir conflict can be traced back to 14 and 15, August, 1947. On this day two new independent sovereign states of India and Pakistan were created. The states were carved out of decolonisation process of the British Empire, at the lapse of the imperial paramountcy. The dispute over the political future of J & K has persisted till date. The history of the dispute isn't particularly inspiring for the resolution process. It is replete with instances of distrust and hostility. The unverifiable claims and counter claims of both India and Pakistan make the history of this conflict confusing and inconclusive. Some facets of the dispute are however, clear. The disputed status of J & K and the role of the wishes of the people of J & K in deciding their political destiny are largely unambiguous, though not uncontested.

At the time of Independence of the two countries in 1947, part of J & K ended up under Indian administration and a part ended up under Pakistani administration. Since 1947 both the countries have tried to legalize the hold on the parts under their administration, while keeping the claim for the other part alive. J & K has been converted into an exclusively geographical term. The human dimensions of this territory have largely been ignored. The legality of the processes utilized to "legalize" the hold on to the respective parts under the administration of the two countries, is still subject to debate.

We analyze the conflicting versions of history through three distinct dimensions viz. the external dimension, the internal dimension and the struggle.

The external dimension: The external dimension pertains to the attempts by India and Pakistan to advocate their case in the United Nations and with other members of the diplomatic community. The attempts were not restricted to diplomatic means and meant three wars between the states of India and Pakistan.

The Internal dimension: The internal dimension pertains to the relationship, degree

of independence, gradual erosion of independence of the respective governments of the two parts of the state under Indian and Pakistani administration.

The struggle: History in all its shades began to lose its relevance since 1989. A popular resistance movement emerged in J & K S, in 1989 and is still on. This struggle has institutionalized the dimension pertaining to the claims of the people of J&K.

The External Dimension

We present a chronological order of the shaping of events since 1947. This is basically a brief summary of the Indian and Pakistani advocacy of their viewpoint at various international forums including the United Nations.

Chronology of Events

1947

14 August: Pakistan gains independence

15 August: Indian gains independence

15 August, 1947 – 27 October, 1947 : J & K was neither a part of India nor a part of Pakistan. It was an independent country by default but was not recognized as an independent country, either by any other state or international institution. In the pre 15 August era, J & K was a princely state, independent as per the version of independence prevalent in that period through bilateral agreement with the British Empire. It was never a part of the concept of India existing in the pre 1947 era of British Empire. J & K had a Hindu monarch ruler (Maharaja) and a majority Muslim population. During this period the Maharaja signed a standstill Agreement with the state of Pakistan.

October 22-24 : The Pakistani version of events is that North-West Frontier tribes poured into Kashmir in reaction to slaughter of Muslims in Jammu, by the Maharaja's troops and other anti-Muslim militants in an operation to disarm Muslims in Kashmir.

The Indian version is that it was an act of aggression by the state of Pakistan to militarily take over Kashmir and that the tribesmen theory was a part of deception.

October 26-27 : Irrespective of the veracity of either of the claims, this particular incident was the stimulus for the signing of the provisional accession to the State of India. The accession was signed by the Maharaja and the dispute has since revolved around this document. The Maharaja wrote a letter on October 26, 1947 to Indian Governor General seeking help of the Indian dominion against the tribal invasion and also attached along with the instrument of accession to India. The Indian Governor General replied on October 27, 1947 accepting accession in the special circumstances mentioned by the Maharaja, however, observing that the "question of accession should be decided in accordance with the wishes of the people of the state, it is my government's wish that, as soon as law and order have been restored in Kashmir and her soil cleared of the invader, the question of the state's accession should be settled by reference to the people".

The legality of a fleeing Maharaja signing the deed of accession is suspect. However it does go to the credit of the Maharaja that he ensured that the final decision is left to the people of J & K. This is important because this was the last credible reference to people. Thereafter the conflict has revolved around land with token references to the people of J & K.

November 1: The Governor Generals of India and Pakistan met at Lahore to discuss the J & K conflict. Both agreed to a plebiscite in J & K. However there was lack of unanimity and the meeting ended inconclusive.

November 2: Indian Prime Minister, Jawaharlal Nehru, in a speech aired on the All India Radio, reaffirmed the Indian Government's commitment to the right of the Kashmiri people to determine their own future through a plebiscite.

January 1: India lodges complaint in the UN Security Council against Pakistan, accusing it of aiding and abetting tribal attacks into Kashmir. Pakistan denies the accusation and counters that India is responsible for genocide of Muslims.

April 21 : UN Security Council passes a resolution allowing India to minimum retention of her forces in Kashmir to aid civil power, and empowering the UN Secretary General to appoint a Plebiscite Administrator to act as "an Officer of the State of Jammu and Kashmir".

July 7 : The United Nations Commission on India and Pakistan (UNCIP) arrives in the subcontinent, landing in Karachi.

August 13 : The United Commission on India and Pakistan (UNCIP) passed a

resolution providing for: 1) Ceasefire 2) Withdrawal of Pak troops and tribal forces, followed by Indian troops and 3) Plebiscite.

December 23-25 : India and Pakistan respectively submit to UNCIP their acceptance

1949

January 1: UNCIP adopts resolution which brings ceasefire into effect between India and Pakistan.

July 18: Karachi Declaration signed between India and Pakistan establishing a UN supervised ceasefire line. The demarcation of J & K thus accruing, left India with control of about 139000 square kilometres including Srinagar and the Kashmir valley while Pakistan controlled 83807 square kilometres including Muzzafrabad and Giligit, Baltistan areas.

1950

April 12: Security Council appoints Sir Owen Dixon, eminent jurist from Australia, as UN Representative. Appointment is accepted by both India and Pakistan.

June-July: Owen Dixon conducts intensive negotiations with the governments of Pakistan and India and also meets Sheikh Abdullah in Srinagar and Chaudry Ghulam Abbas in Muzafarabad.

September: "The Dixon plan, proposed by Sir Owen Dixon, UN Representative for India and Pakistan on Kashmir, submitted to the Security Council, assigned Ladakh to India, the Northern Areas and J & K under Pakistani Administration to Pakistan, split Jammu between the two, and envisaged a plebiscite in the Kashmir valley.

1951

The Security Council representative Frank Graham presents twelve proposals to India and Pakistan. While some were acceptable to both, disagreement persisted on demilitarisation and the induction into office of a Plebiscite Administrator. Meetings to resolve the differences at New York and Geneva failed to resolve anything.

1952

In his revised proposals on 16 July 1952, Graham tries to narrow down the differences on the size and disposition of troops but does not succeed. Negotiations

continue and agreement is reached on all points except the size of Pakistani Administered Kashmir and the Indian and Kashmir state forces to be retained on the eve of the plebiscite and the timing of the Plebiscite Administrator's appointment. Further negotiations at the UN and Geneva do not reduce the differences on these two points. Finally, Graham reports failure of his mission to the Security Council on 27 March, 1953.

In August 1952, referring to the plebiscite in J & K, Pandit Jawaharlal Nehru told the Indian Parliament, "he wanted no forced unions, and if the people of Jammu and Kashmir want to go their way we shall go our way."

1953

July 25-27: Pakistani and Indian Prime Ministers meet in Karachi and agree that a resolution of their disputes is essential to progress in both the countries.

August 17-20: Pakistani Premier, Mohammed Ali Bogra and his Indian counterpart, Pandit Nehru meet in Karachi and New Delhi respectively and hold direct negotiations on Kashmir. In a joint communiqué at the end of the talks, the two leaders re-affirmed that the fate of Kashmir should be decided in accordance with the wishes of its people. Both the countries agree on appointment of Plebiscite administrator by the end of April 1954.

1953-1960

Between 1953 and 1960 many meetings took place at the Prime Minister level between the states of India and Pakistan in New Delhi, Karachi, and London. The meetings revolved around the resolution of the Kashmir conflict but ended up inconclusive.

By 1953, The Soviet Union was calling the Kashmir question an "internal affair" of India.

In mid-1954, Pandit Jawaharlal Nehru declared that" India still stands by her international commitments on ----Kashmir".

In 1955, the by now openly uncompromising Indian stand on Kashmir received a significant boost from Premier Khrushchev, who announced on a visit to Sringar that the "people of Kashmir" only wished to "work for their motherland, the Republic of India".

In mid-1956, Pandit Jawaharlal Nehru made a public offer of permanent demarcation of the ceasefire line as the interstate boundary. The offer was angrily rejected by the Pakistanis.

These statements were powered by the erosion taking place on the internal front in J & K S.

1960-1965

Indus Water Treaty and Indus Basin development Agreement signed between India and Pakistan, with World Bank mediation and facilitation in September 1960.

Between December 27, 1962 and May 16, 1963- six rounds of inconclusive talks were held between India and Pakistan at the Ministerial level.

Pakistan's President Ayub Khan and Indian Prime Minister Lal Bahadur Shashtri meet in Karachi but no dramatic announcements were made nor was there any expression of goodwill. However it was agreed that next contact would be at the Ministerial level.

Between 1948 and 1957 fourteen resolutions pertaining to the Kashmir conflict were adopted by the Security Council and a statement of Security Council President on 18 May, 1964 was made to the effect that India-Pakistan question on Jammu and Kashmir remains on the agenda of the Security Council

Till 1965, Soviet Union religiously vetoed every attempt to raise the Kashmir issue at the UN.

Large scale fighting erupted in Rann of Kutch between India and Pakistan in April. Fighting spread across the ceasefire line in J & K in May 1965. Pakistan's President Ayub Khan and Indian Prime Minister Lal Bahadur Shashtri met at the London Commonwealth Prime Minister's Conference and signed an agreement to resolve disputes peacefully. Fighting again erupted along the ceasefire line in August.

UN sponsored ceasefire came into effect on September 23.

1966

January: Peace Conference at Tashkent in Uzbekistan, under USSR sponsorship, between Pakistan's President Ayub Khan and Indian Premier Lal Bahadur Shashtri

produces the Tashkent declaration. Both countries would have to withdraw their forces to positions prior to August 5, 1965.

1971

Indian troops intervene in the East Pakistan crisis. This leads to a war and fighting spreads to Punjab, Rajasthan and Kashmir. Dhaka falls to Indian forces and Bangladesh comes into being. India ends up with thousands of Pakistani prisoners of war in Bangladesh.

1972

President Z.A.Bhutto of Pakistan and Indian Prime Minister, Mrs. Indira Gandhi sign the Simla Agreement, which provided for return of territory captured in 1971, return of Pakistani prisoners of war and resolution of mutual differences through all peaceful means. The accord renamed the ceasefire line in J & K as the Line of Control (LOC). The Simla agreement also called upon both sides to respect the LOC "without prejudice to the recognized position of either side", prohibited either side from unilaterally altering the LOC and bound both countries "to refrain from threat or use of force in violation of this Line"

1972 onwards

The ritual of bilateral summits continues till date so does the rancour and hostility for each other. The resolution to the Kashmir issue is as elusive. The tone of the statements changed with the passage of time. India now states that J & K is an integral part of India and asserts that the endorsement of the accession by the unelected J & K Constituent Assembly is a substitute for plebiscite. Pakistan has through out advocated a plebiscite without fulfilling the conditions of the plebiscite. The role of the International community is still there but it has transformed into covert facilitation. The risks of conflict still remain high and with both the countries possessing nuclear weapons, the dangers of an unresolved Kashmir conflict are even grave. A new dimension to the dispute was the popular resistance movement in J & K S, since 1989. This has diluted the relevance of history and the reference point in any resolution process would have to be the resistance movement, which is rooted in the concept of an independent state of J & K.

Status of International Observers[1]

In January 1948, the Security Council adopted a resolution, establishing the United Nations Commission for India and Pakistan (UNCIP) to investigate and mediate the dispute. In April 1948, the Commission decided to enlarge the membership of the UNCIP and to recommend various measures including the use of observers to stop fighting. In July 1949, India and Pakistan signed the Karachi Agreement establishing a ceasefire line to be supervised by the observers. On 30 March 1951, following the termination of UNCIP, the Security Council by its resolution 91 (1951) decided that United Nations Military Observer Group in India and Pakistan (UNMOGIP) should continue to supervise the ceasefire in Kashmir.

At the end of 1971, hostilities again broke out between India and Pakistan. In July 1972, India and Pakistan signed an agreement defining a Line of Control, which with minor deviations, followed the same course as the ceasefire line established in the Karachi Agreement of 1949. India took the position that the mandate of the UNMOGIP had lapsed, since it related specifically to the ceasefire line under the Karachi Agreement. Pakistan, however did not accept this position.

Given the disagreement between the two parties about UNMOGIP's mandate and functions, the Secretary General's position has been that UNMOGIP could be terminated only by a decision of the Security Council. The military authorities of Pakistan have continued to lodge complaints with the UNMOGIP about ceasefire violations. The Indian military authorities have lodged no complaints since January 1972 and have restricted the activities of the UN observers on the Indian side of the LOC. They have however continued to provide accommodation, transport and other facilities to UNMOGIP.

The Internal Dimension

India - J & K S

Pakistan - J & K M

India - J & K S

The relationship between New Delhi and Srinagar is a story of denial of reality.

For the people of J & K, aspirations meant right to self determination to determine their own political destiny. The 1947 provisional and conditional accession could at worst have meant a transitory phase and means to an end rather an end in itself.

For the state of India territorial control followed by territorial integration, followed by constitutional integration followed by constitutional assimilation seems to have been the guiding objectives.

The first aspect of the relationship pertains to the validity of the accession-whether a legal basis for relationship exists at all. The validity of this deed does not have unanimous acceptance and the popular resistance movement in J&KS in fact points towards rejection. The second aspect relates to the provisional and conditional nature of the accession. Assuming the accession is valid, it is still provisional and conditional to the acceptance by the people of J & K. There is no scope for substituting the right to self determination of the people of J & K and vesting it in an institution or an individual. The denial of the right to self determination to the people of J & K heralds the start of the history of denials. The third aspect is the nature of the relationship between J & K S and the state of India. The instrument of accession legally valid or invalid envisaged a loose linkage to the state of India. The deed of accession is flavoured with the terms sovereign rights of the ruler of J & K and sovereignty of J & K. The levels of independence envisaged in the instrument of accession explicitly hint towards shared sovereignty. However in practice it has been a story of erosion of the independence of the government of J & K S, even by the standards set by the state of India itself i.e. the deed of instrument of accession.

Chronology of Events

We will try to put forward a chronological order of the interplay of events, individuals, interests in formulating the power sharing structure between India and J&KS.

14-15 August, 1947 to 26 October, 1947

Independent states of India and Pakistan come into existence. J & K is a part of neither of the two states and continues to exist as a sovereign entity though bereft of recognition from any other state or International Institution.

J & K entered into a standstill agreement with the state of Pakistan. The state of Pakistan aided J & K to perform duties related to communications and trade.

Communal riots took place in Jammu. The Maharaja's police was accused of having abetted the rioters and indulged in massacre and expulsion of thousands of Muslims from Jammu's eastern districts.

The people of Poonch rose in revolt against the Maharaja's army on October 6, 1947. On October 22, 1947 similar actions took place in Muzafarabad. Gilgit area also saw a revolt against the Maharaja's army. These revolts finally manifested in the form of division of J & K into two parts, one under Indian administration and one under Pakistani administration.

Sheikh Mohammed Abdullah was released from jail and appointed Emergency Administrator.

A provisional and conditional accession was agreed between the Maharaja and the state of India. The accession was subject to ratification by the people of J & K. The extent of Indian sovereignty was restricted to the subjects of defence, communication and external affairs and ancillary matters.

27 October, 1947 to 20 June, 1952

The State continued to be ruled under the 1939 Constitution promulgated by the Maharaja in exercise of the regal powers vested in him as a Monarch.

On March 5, 1949 Maharaja appointed Sheikh Mohammed Abdullah as the Prime Minister of the interim Government.

Maharaja Hari Singh left the state on 20 June, 1949 owing to persistence of differences with Sheikh Mohammed Abdullah.

Maharaja Hari Singh before leaving issued a proclamation entrusting his son, Karan Singh all powers and functions whether legislative, executive or judicial which were exercisable by the Maharaja under the Constitution of 1939.

The Indian Constitution was passed by the Indian Constituent Assembly on 26 November, 1949 and came into force on 26 January, 1950. Article 370 made a mention of the J & K Constituent Assembly for regulating the relationship between J&K and India. By virtue of this article, power was given to the President to apply to J&KS legislative powers and other provisions of the Constitution of India. But the power was exercisable subject to two conditions. Firstly, if the legislative power or other provision of the Constitution related to a matter specified in the Instrument of

Accession, it could be applied with the consultation of the State Government. Secondly, if the legislative power or other provision of the Constitution related to a matter other than that specified in the Instrument of Accession, it could be applied only with the concurrence of the State Government. But the condition super-imposed on the condition of concurrence of the State Government was that it was subject to the ratification by the State Constituent Assembly to be convened for the purpose of framing the Constitution of the State.

Proclamation issued for convening of the National Assembly later called the Constituent Assembly, on 20 April, 1951. The Assembly was to be elected through a democratic mode. The purpose of the Assembly was to frame a constitution for J & K.

The first meeting of the Constituent Assembly was held on 31 October, 1951.

Democracy continued to be a relative term in J & K S. The elections were held and all the seventy five candidates were elected unopposed. And this Constituent Assembly was supposed to decide not only on behalf of the residents of J & K S but also the residents of J & K M- the residents of a territory over which this government had no territorial control.

Basic Principle's Committee headed by Sheikh Mohammed Abdullah and Mir Qasim as its Secretary was appointed to decide the form of government for the people of J & K.

Committee report was submitted on 10 June, 1952 and recommended that the form of future Constitution of the State shall be wholly democratic; the termination of hereditary dynastic rule and its replacement by a President, elected by the people of J&K for a limited period and not for lifetime. The recommendations were accepted by the Constituent Assembly on 11 June, 1952. The head of the state would be designated as the Sadar-i-Riyasat.

Acting on the recommendations of the Constituent Assembly, the President of India declared that, as from 17th day of November, 1952, Article 370 shall be operative. For the purpose of this article the Government of the State would mean the person for the time being recognized by the President on the recommendation of the Legislative Assembly of the State as Sadar-i-Riyasat of Jammu and Kashmir, acting on the advice of the Council of Ministers.

Delhi Agreement was announced by Pandit Jawaharlal Nehru in the Lok Sabha on 24 July, 1952 and in the Raj Sabha on August 5, 1952. The agreement was explained

to the J & K Constituent Assembly by Sheikh Mohammed Abdullah on 11 August, 1952. The Delhi agreement was the second formal power sharing structure between J&KS and India.

The Delhi Agreement marked the first major erosion of the spirit of the deed of accession.

8 August, 1953 to 26 January, 1957

On 8 August, 1953, Sheikh Mohammed Abdullah was dismissed and imprisoned formally by Karan Singh "functioning in the interests of the people of the state". The dismissal and arrest of Sheikh Sahib was partly in reaction to his public utterances of exploration of independence option, in view of the provisional relationship. The dismissal is till date a constitutional miracle, and so are the laws and the constitution passed by that Constituent Assembly, whose head was removed and arrested without the issue being referred to them. The arrest and dismissal of Sheikh Sahib is an indicator of the constitutional validity and credibility of the J & K Constituent Assembly both before and after Sheikh Sahib's dismissal.

Bakshi Ghulam Mohammed, Sheikh Sahib's close confidant was installed as the new Prime Minister.

On 17 January, 1956, a new Constitution was adopted by the J & K Constituent Assembly. This constitution stated, "in pursuance of the accession of this state to India on the twenty-sixth day of October, 1947, to further define the existing relationship of the state with the Union of India as an integral part thereof". The last session of the Constituent Assembly was held on 25 January, 1957 in the Grey Hall at Jammu and the Constituent Assembly was declared dissolved according to the Resolution passed on 17 November, 1956. The Constitution of the state was made enforceable with effect from 26 January, 1957.

The said Constitution shaped J & K S as a Republican-democratic state within the Union of India with its own separate flag, official language and an elected head of state called the Sadar-i-Riyasat.

By section 5, the Constitution of J & K S provided that the executive and legislative power of the State shall extend to all matters except those with respect to which Parliament of India has power to make laws for the State under the provisions of the Constitution of India.

To begin with, the President, acting under Article 370, made the Indian Constitution (Application to J & K S) Order 1950 by which such legislative powers and other provisions of the Constitution were applied to the State as corresponded to matters specified in the Instrument of accession.

The constitutional Order No. 10 of 1950, was superseded by the Constitution Order No. 48 issued by the President of India on 14 May, 1954. This order applied to State all those legislative powers and other provisions of the Indian Constitution which correspond to matters not only specified in the Instrument of Accession but also matters covered by the Delhi Agreement of 1952. By means of section 5, the State Constituent Assembly confirmed the existing arrangement and endorsed the concurrence of the State Government to Delhi Agreement of 1952.

This order was the source of all future erosions that took place in the independence of the government of J & K and in blatant contradiction of the spirit of the deed of accession or even the Delhi Agreement. While Article 370 was outwardly the visible face of the special relationship, the order of May 14 1954 provided the "legal" basis for exhuming Article 370 of most of its special provisions. All subsequent constitutional orders derive their "legality" from the 14 May, 1954 order. Jurisdiction of Union Parliament was extended to almost all subjects in the Union List. Part II of the Indian Constitution became applicable as a result of the 14 May 1954 Order. Part III of the Indian Constitution was made applicable. The order also put drastic curbs on fundamental liberties.

In 1958 by virtue of a Constitutional amendment, Jammu and Kashmir was brought under the purview of Central Administrative Services. This meant that Indian nationals would be a part of the bureaucracy in J & K. This is a strange mismatch. Members of the elite Civil Services of State of India can influence those areas of governance where the State of India has constitutionally no influence. This particular amendment meant indirect and sustained erosion of the independence of the government of J & K S.

Some of these provisions were in conflict with the provisions of the State Constitution. Article 356 was extended to the state in 1965. It was in clear conflict with section 92 of the State Constitution. To Article 368, the clause 4 was added in its application to the State as follows: " No law made by the Legislature of the State of Jammu and Kashmir seeking to make any change in or in the effect of any provision of the Constitution of Jammu and Kashmir relating to- a) appointment, powers, functions, duties, emoluments, allowances, privileges or immunities of the Governor;

or b) superintendence, direction and control of elections by the Election Commission of India, eligibility for inclusion in the electoral rolls without discrimination, adult sufferage and composition of the Legislative Council. Being matters specified in 138,139,140 and 150 of the Constitution of Jammu and Kashmir, shall have effect unless such law has, after being reserved for consideration of the President, received his assent". This clause is in conflict with section 147 of the State Constitution which empowers the State legislature to make such changes without any condition. Further, there was no Constituent Assembly to endorse the State Government's concurrence.

Consequently, the extension orders made after 17th November, 1956 when the State constituent Assembly dispersed have absolutely no legal basis and could be treated as being null and void.

As per the sixth Amendment of the Constitution of Jammu and Kashmir, 1965 the nomenclature was changed from Sadr-i-Riyasat to Governor and from Prime Minister to Chief Minister. The Governor would no longer be an elected post and would be appointed by the President of India. In the name of democracy, the dynastic rule ended in 1952 and the post of Sadr-i-Riyasat established. The sixth Amendment bares the real objectives of the actions of 1952. If the earlier amendments and constitutional orders eroded the powers of the government of J & K S, this amendment relieved it of the special titles and made the Executive an Indian appointee.

Section 147 of the State Constitution has declared itself immutable. Consequently, that section could not lend itself to amendment to allow the expression Sadar-i-Riyasat to make room for Governor. To overcome this difficulty, sub section 3 was inserted in section 2 to the following effect: "Any reference in the Constitution to Sadar-i-Riyasat shall, unless the context otherwise requires, be construed as reference to the Governor." The insertion was made through an amendment made under section 147, which makes the amendment clearly invalid.

By Clause (3), Article 370 creates a bar against amendment of that article except on the recommendation of the State Constituent Assembly. There was no State constituent Assembly which could make the requisite recommendation. The device employed to reflect the change concerning Sadar-i-Riyasat in Article 370 was that the President acting under article 370(1) made an order whereby, in its application to the State, Clause 4 was added to Article 367.

The process of erosion and constitutional assimilation continued. So far, 260 Articles out of the 395 of the Federal Constitution, 94 out of 97 entries of the Union

List, and 26 out of the 47 entries of the Concurrent List of the Seventh Schedule of the Federal Constitution have been applied to the state. Similarly, out of 12 Schedules, 7 have been made applicable to the State in terms of Article 370 of the Constitution.

Bakshi Ghulam Mohammed was removed in 1963 and G M Sadiq was installed in his place. The process of assimilation continued.

1975 Accord

In 1975, Sheikh Sahib entered into an accord with India, in what was known as the Indra-Abdullah Accord. As part of this accord, Sheikh Sahib was again made the head of the state but with the title of Chief Minister and there was no roll back of the erosion that had taken place.

Elections

Elections were held in 1957 as well as 1962 and as in the past most of the candidates were elected unopposed.

Elections were held in 1967 and in 1972. The previous traditions of democracy of denial were maintained. In 1972, Plebiscite Front was banned from contesting.

Elections were held in 1977, which were largely free and fair. National Conference won the elections.

Elections were held in 1983 and National Conference once again won. These elections were relatively rigged compared to the 1977 elections.

Elections were held in 1987. This election was reminiscent of the earlier era of selections in the name of elections. National Conference and Congress were fighting together as an alliance and blatantly rigged the elections. Although the cause for the popular resistance movement is rooted in demands for right to self determination, the rigging of the 1987 elections did catalyze the movement and thrust an armed movement onto the people of J & K S. Ironically, National Conference which had all along been a victim of riggings in the past was now rigging the elections in collusion with the state of India.

After the eruption of the popular resistance movement in 1989, J & K S was put under Central rule for seven years.

Elections were held in 1996 and 2002. These elections were boycotted by a vast majority and saw a return to the earlier era of selections in the name of elections.

Pakistan - J & K M

Chronology of Events

1947 – 1960

The creation of the state of J & K M is a result of a revolt by the local populace against the dynastic rule of the Maharaja. In reaction to the events that unfolded in Srinagar, the local population revolted and one third of the state of J & K was separated. J & K M declared self government on October 24, 1947. A provisional government was set up with its headquarters in Palandri. The capital was later moved to Muzafarabad. The government declared that it existed for the temporary purpose of restoring law and order in the state and enable the people to elect by their free vote a popular legislature and a popular government.

Sardar Mohammed Ibrahim Khan was nominated the President of this government.

The aims and objectives of the government apart from reforms and development, were to liberate the other part of J & K.

The status of J & K M was never determined in any legal framework neither by the United Nation Security Council nor by the government of Pakistan.

UNCIP passed a resolution on August 13, 1948, "Pending final solution, the territory evacuated by the Pakistani troops will be administered by the local authorities under the surveillance of the commission."

Joseph Korbel, a member of the UNCIP clarified on September 2, 1948: "By local authority we mean the Azad Kashmir people, though we cannot grant recognition to the Azad Kashmir Government".

Pakistani position on J & K was that the accession is neither final nor legal. The constitutional clause relating to J & K states: "When the people of State of Jammu and Kashmir decide to accede to Pakistan, the relationship between Pakistan and the State shall be determined in accordance with the wishes of the people of the State."

After the ceasefire agreement of January, 1949, between India and Pakistan, the

J&KM government formalized the rules of business for running the administration. The executive as well as the legislative authority was vested with the President of J&KM.

On April 28, 1949, The Karachi Agreement was signed between Pakistan and the AJK government and Muslim Conference. As per this agreement Defence, foreign affairs, negotiations with UNCIP and coordination of all affairs relating to Gilgit were Pakistani subjects.

This signalled the separation of the state of J & K M into two entities. Gilgit and Baltistan areas were separated and are now known as Northern Areas.

Pakistan created the Ministry of Kashmir affairs and Northern Areas (MKANA) in March, 1949. This was supposed to be the mode of liaison between the state and Pakistan.

On March 2, 1949, the working committee of Muslim Conference, the largest political party adopted a resolution that gave significant powers to the supreme head of the party. The supreme head was given the power to appoint president and other members of the council of ministers and they would be accountable to him.

Chaudhry Abbas was the supreme head of the Muslim Conference. The Government of Pakistan recognized the supremacy of Chaudhry Abass and his working committee. The ministry of Kashmir affairs followed it up by introducing new rules, investing all executive and legislative powers in the supreme head of the Muslim Conference. All legislation required Chaudhry Sahib's prior approval.

Chaudhry Abbas was instrumental in sacking the government of Sardar Ibrahim in May, 1950. This led to mass uprising against the non democratic powers of the supreme head of Muslim Conference. A civil disobedience movement was launched.

The Pakistan administration sacked and appointed a number of governments. There was a clear lack of permanency.

In order to meet the popular demand for civil rights and a democratic set up, the J&KM government revised the Rules of Business with the consent of MKANA, thrice in eight years.

The rules of the business were revised in 1952, purportedly to create a balance of power,. However, instead of giving vote to people, these rules vested full powers in

the Ministry of Kashmir Affairs. As per the new rules, "The president of Azad Kashmir government shall hold office during the pleasure of the All Jammu and Kashmir Muslim Conference, duly recognized as such by the government of Pakistan in the Ministry of Kashmir affairs. In addition to the general supervision over all departments of government, the Joint Secretary Ministry of Kashmir affairs shall pass final orders on appeals against orders passed by Secretaries and Heads of Departments in respect of government servants under their control in all matters of appointments and promotion and disciplinary actions of all kinds".

The rules of business were again revised in 1958. The Joint Secretary of Ministry of Kashmir Affairs was replaced by Chief Adviser. The Chief Adviser was to be selected by the Ministry of Kashmir Affairs and not by the "AJK" Government.

All functions of the government were exercised in the name of the president, while the real power vested in the hands of the powerful MKANA officials. The rules stated: "The ministry will have general supervision over the Azad Kashmir government in matters of policy and general administration".

No elections were held till 1960.

1961 – 1970

General Muhammad Ayub Khan banned political activity in Pakistan and J&KM on October, 1958. Sardar Ibrahim Khan's government was dismissed in November 1959. K.H. Kurshid was appointed the new president.

In 1960 "Basic democracies" act introduced in Pakistan and was extended to J&KM. Under this act President of Azad Kashmir and Azad Kashmir Council were to be elected indirectly by the members of the various local bodies, who were elected directly.

President of J & K M was elected in 1961 through an electoral college of 1200 "basic democrats" in J & K M and another 1200 who represented Kashmir refugees in Pakistan.

Chaudhry Ghulam Abbas and Sardar Ibrahim were barred from taking part in elections, on charges of corruption.

K H Kurshid was the first elected president of J & K M. The centralization of powers in Islamabad continued to trouble the president. The Ministry of Kashmir

affairs officials were not cooperative and at times refused to take orders. Unfortunately Chaudhry Abbas Sahib also worked behind the scenes and finally the elected president's tenure was cut short with an unceremonious resignation.

During this tenure of K H Kurshid, an act had been passed by virtue of which the State Council could not undertake any legislation without the previous consent of the chief adviser and no law could take effect unless the chief adviser directed so by a notification.

Leading political parties headed by Sardar Ibrahim Khan, Sardar Qayum Khan and K H Kurshid formed an alliance in August, 1968. The purpose of the coalition was to strive for a devolved power structure and free the J & K M of the MKANA hold. They held demonstrations in J & K M and all over Pakistan.

1970 – 1974

Abdul Hameed Khan, a retired General was appointed as the Minister for Kashmir affairs in 1969. He met with the coalition formed by the leaders of J&KM and sought their suggestions for constitutional changes and reform. He also formed an interim government to draft a new constitution for J & K M and hold fresh elections.

The show of unity in demands for a democratic set up started to deliver results in 1970. A democratic set up was established in J & K M through the 1970 Act and Presidential elections were held on the basis of "one person one vote" democratic formula. The state subject law of 1924 which bars non Kashmiris to obtain state citizenship was also made part of the constitution.

For the first time in 1970, the Legislative Assembly and the President of J&KM were elected by the people of J & K M and the refugees from Kashmir, living in Pakistan. The Assembly consisted of 24 members and one lady member elected indirectly by fellow members. The assembly however had limited legislative powers especially in matters pertaining to defence, currency, UNCIP resolutions, foreign affairs and foreign trade.

1974 onwards

The Presidential system worked for about four years. Following an accord with the local political parties, on June 10, 1974, Ministry of Kashmir Affairs announced a new legislative arrangement for J & K M. The Act of 1970 was modified and re-enacted as Azad Kashmir Interim Constitution Act, in August, 1974. This included 42 members

of Assembly elected entirely on the basis of adult franchise for a five year term.

Institutionalization of the Relationship with Pakistan

Pakistan institutionalized its relationship with J & K M by establishing a new body called Azad Jammu and Kashmir Council headed by the Prime Minister of Pakistan.

Under the new constitution, the eleven member Council is headed by the Pakistan Prime Minister as the Chairman of the council, while the J & K M president is its vice chairman. This has to a great extent reduced the role of Ministry of Kashmir affairs, but the Minister in charge of Kashmir affairs is still ex-officio member of the council. Under this arrangement, Pakistan's Prime Minister nominates five members of Pakistan Assembly to the council while the J & K M Assembly elects six members on proportional representation (of political parties) basis among its members.

1974 Act has still not been able to establish an equitable, devolved, power sharing structure. The present arrangement tilts the balance of power in favour of the Kashmir Council at the cost of the J & K M Assembly. Fifty two subjects are under the jurisdiction of the Kashmir Council. The State Constitution states, "executive authority of the council shall extend to all matters with respect to which the council has power to make laws and shall be exercised in the name of the council, by the chairman who may act either directly or through the secretariat of the council". Ironically the Chairman, five members from Pakistan Assembly and the Minister in charge of Kashmir affairs together form a majority in the Council.

The Kashmir Council has powers over all development funds, while the J&KM government powers are limited to local revenues generated.

The Council's decisions are final and not subject to judicial review, either by the judiciary of Pakistan or that of J & K M.

Power still resides in Islamabad and with the ministry of Kashmir affairs with regard to all legislation and appointments, questions of general policy, budget, internal security and matters relating to civil supplies. Judges and the election commissioner are appointed by the Prime Minister of J & K M, but not without the consent of the chairman of the Kashmir Council.

Islamabad appoints the four highest ranking officials in the state administration and they have to be Pakistani civil servants. Chief Secretary, Finance Secretary, Inspector General of Police and Accountant General are all Islamabad appointees.

None of the local officers can be promoted to these top slots.

In theory, the state of J & K M has a Prime Minster, President, Supreme Court, Election Commissioner. Yet in practice they exercise no power. The titles can be quite misleading.

"AJK" Constitution (Article 53) also gives the federal government the power to dismiss the elected government in "AJK" in emergency situation.

Despite a depleted level of share in power sharing structure, the legislative assembly has not passed any amendments to rectify the same.

Elections are held at regular intervals but tend to be rigged and cannot be held as examples of free and fair elections. Rigging in the state elections is a constant practice. A number of independent analysts had written that elections over refugee seats were never held freely, fairly and transparently. Every time the federal and provincial governments have managed to gift these seats to their allies in J & K M politics.

Northern Areas – Pakistan

The Northern areas are under the direct rule of Pakistan.

Pakistan assumed charge of these areas from the state of J & K M on the pretext that J & K M would be unable to govern directly, due to lack of finances.

The transfer was temporary in light of the extraordinary circumstances that existed.

The Northern Areas are no longer considered to be a part of the state of J&KM, ironically they are still considered to be a part of the state of J & K.

The J & K M Assembly has unanimously declared that the Northern areas are a part of the state of J & K. Despite the unanimous resolution, the state of J&KM does not show Northern Areas as a part of the state of J & K M in their official maps.

In 1993, The J & K M High Court ordered the state government to take over the control of Gilgit and Baltistan areas. The verdict could not be implemented due to directions against the verdict by the Pakistani Supreme Court.

The people of the Northern Areas are bereft of any democratic institutions and continue to live in a state of uncertainty.

The Struggle

In 1989, a mass-based people's movement, including armed struggle, erupted in J&KS against the unresolved status of J & K demanding the re-unification and independence of J & K. The movement was a culmination of sorts in a decades-long epic of struggle and sacrifice by the people of J & K. The movement is still on and in the process people in J & K, most especially in J & K S, have rendered exemplary sacrifices. 1989 in essence marks the end of history and relegates its role to a witness of a dispute. Post 1989 the conflict has revolved around the struggle and the aspirations of the people of J & K.

Learning and Unlearning History

Struggle or History

The Indian state's argument of the accession being full and final and J & K being an integral part of India does not have the desired level of historical or legal or moral justification. The historical or legal evidence does not endorse this Indian stand, neither does the moral evidence- the ongoing popular resistance movement, and the loss of lives is an indicator of the moral costs being incurred by the people of India, in allowing the state of India to keep the J & K dispute unresolved, or holding on to the land against the wishes of the people inhabiting the land. The validity of the accession is at best ambiguous and the conditionality irrespective of its validity is yet to be fulfilled.

The Pakistani stand is that the territory of the state of J & K is disputed and the final decision should be in accordance with the wishes of the people of the state of J & K. The words do not find support in the deeds. The mention of the state of J & K in the Pakistani Constitution unilaterally presumes that the people of the state of J & K would accede to the state of Pakistan. Article 257, of the Constitution of Pakistan states, "When the people of State of Jammu and Kashmir decide to accede to Pakistan, the relationship between Pakistan and the State shall be determined in accordance with the wishes of the people of the State".

While the Indians could be held guilty on account of coercing a fleeing Maharaja to sign the deed of accession, Pakistan cannot be absolved of its role in forcing a decision on the Maharaja. Even if we take the Pakistani version that the raiders came

on their own accord and that the state of Pakistan had no role in despatching them to J&K, the reality is that Pakistan failed to fulfil the obligations of a state in not allowing directly or indirectly the usage of its territory for aggressive designs against a neighbouring state. Pakistan directly or indirectly did set up the conditions, under which a decision was forced on the Maharaja and most likely against his will. The raiders were more of bandits and less of freedom fighters. They seemed to be more than keen to loot and plunder, rather than to liberate the state of J & K.

The events of 1947 set the stage for a historical battle of claims, counter claims and wars between India and Pakistan and an unending journey of pain and suffering for the people of J & K. Right from the outset the battle of claims pertained to land and not the people of J & K. Decades passed and history along with the UNCIP Resolutions was a mute witness to the battle of claims. The cacophony of the competing claims of India and Pakistan and their espousal at the international forums resulted in the crowding out of the third option i.e. the independence option. The independence option was rooted in the concept of land and the people of J & K.

The year 1989 signalled the starting of the end of the role and scope of history in the resolution of the J & K dispute. The ongoing struggle has been able to crowd in the independence option and shift the focus on the claims of the people of the state of J & K. The independence option is a majority sentiment in the state of J & K. The struggle has institutionalized the concept of "three parties and three options" compared to the traditional "two parties and two options", rooted in the undeliverable UNCIP resolutions and a mute history.

The historical perspectives of both India and Pakistan are far less "relevant and realistic" in the context of the struggle and the sacrifices rendered by the people of J&K. The current era of dialogue, negotiations, flexibility is a derivative of the struggle and not of history. The struggle has made the historical context of the dispute largely irrelevant and transformed the context from historical to sacrificial. The reference point in the resolution process would have to be the sentiment of the people who revived an issue which was presumed to be dead, by sheer dint of sacrifices, pain and sufferings.

Outsourcing of Aspirations

One of the painful lessons of history has been the process of outsourcing of aspirations of the people of J & K, by the leadership of J & K. The outsourcing process took place across both sides of the LOC. While Sheikh Sahib and National

Conference outsourced the aspirations to India, Chaudhry Ghulam Abbas and the Muslim Conference outsourced the aspirations to Pakistan.

In 1947, at the time of independence of India and Pakistan, the leadership in the state of J & K was in a state of flux. There were a variety of leaders, popular, unpopular - all united by individual desire in having a role in the emerging state of affairs. This was exploited by both the states of India and Pakistan. In the barter process the leaders were given roles in exchange for loyalties for India or Pakistan. This meant the division of the leadership of J&K into pro India and pro Pakistan camps. This started the tradition of developing leaders in the state of J & K, rather than identifying leaders in the state of J&K. Sadly the tradition persists and exists even today.

The pro J & K camp was never allowed to evolve or institutionalize. And the resources of both the states were utilized to isolate the nationalists as a bunch of unrealistic, irrelevant individuals.

Sheikh Mohammed Abdullah made a speech in the United Nations Security Council meeting no. 241, held on 5 February, 1948. In the speech, Sheikh Mohammed Abdullah stated that J & K had legally and constitutionally acceded to India. Thereafter Sheikh Sahib repeatedly termed the accession as full and final. He along with other leaders was a party to the formation of the J&K Constituent Assembly, which eventually became the basic institutional instrument of "finalizing the accession", setting up of a power sharing structure between India and the state of J&KS, erosion of the power sharing structure and finally "coerced constitutional assimilation". The right to self determination was vested into a Constituent Assembly which was elected unopposed and the Constituent Assembly outsourced the aspirations to the Indian state. The Indian state's position on plebiscite started to change around 1955. It coincided with the Indian attempts to legalize the accession through the Constituent Assembly. The legality or perceived legality of the changed Indian position on plebiscite derived its sanctity from the J & K constituent assembly. In a speech in the Constituent Assembly the President of the Assembly, after passing the J & K Constitution stated, "We had consequently decided to use our right of self determination and to put an end to the uncertain state of affairs".[2] Bakshi Ghulam Mohammed the then Prime Minister of the state claimed, "We have after the full exercise of our right to self determination passed the Constitution".[3]

References to self determination are important. Around 1955, Jawaharlal Nehru's public promises on plebiscite became rarer and finally the events in the Constituent

Assembly were marketed as a substitute for self determination. The leadership of the National Conference had predetermined their destiny and somehow found it within their competence to decide on behalf of the entire state of J & K. The J & K S leadership played a pivotal role in transforming an internationally recognized conditional accession to a final accession. The process of the internal dimension powering the external dimension has been an important variable and the tradition persists till date.

On April 28, 1949, The Karachi Agreement was signed between the Pakistan and the "AJK" government and the Muslim Conference leadership. The magnanimous J&KM leadership gifted away Gilgit and Baltistan areas to the state of Pakistan and also outsourced the negotiations with UNICIP to the state of Pakistan. Again the Muslim Conference leadership predetermined their destinies and that of the entire state. Post 1970, Pakistan institutionalized the ideology of Pakistan through the "AJK" Constitution. Irrespective of wishes of the people of J & K, the current constitution of "AJK" directly or indirectly predetermines accession to Pakistan.

Part 2 of Section 7 of the constitution says, "No person or political party in Azad Jammu and Kashmir shall be permitted to propagate against or take part in activities prejudicial or detrimental to the ideology of the state's accession to Pakistan."

Under Section 5 (2) (vii) of the "AJK" Legislative Assembly Election Ordinance 1970, a person would be disqualified for propagating any opinion or action in any manner prejudicial to the ideology of Pakistan, the ideology of the State's accession to Pakistan or the sovereignty and integrity of Pakistan.

Without signing an affidavit of allegiance to Kashmir's accession to Pakistan nobody is allowed to take part in the state elections. In the last two elections, nominees of nationalist parties could not contest elections as their nomination papers were rejected by the election commission, because they refused to sign the requisite affidavit. This rule exists in the J & K S as well. Nationalist forces can have no role in the administrative role across both sides of the LOC.

The creation of the Constituent Assembly or making UNCIP negotiations a Pakistani subject started the process of outsourcing of aspirations. This act of outsourcing has eroded the role of the people of J & K in the dispute pertaining to their future. Both the states have utilized the outsourcing to fortify the hold on part of J & K under their territorial control, while keeping the claim for the other part alive.

Context of Erosion (J & K S)

The Exit of Maharaja

Irrespective of the unpopularity of the Maharaja, his exit in 1949 was against the interests of the people of J & K S. The Maharaja was a key figure in the dispute. He was still the ruler of J & K S and the signatory of the conditional accession of J & K S with the state of India. His stay in J & K S, as the ruler of J & K S was essential until the conditions of the accession had been met. By virtue of his status as ruler of J&KS and the original signatory to the deed of accession, he enjoyed a certain amount of discretion and inherent bargaining advantage. His exit was seen as the "starting of the end" of dynastic rule and the beginning of a democratic rule. History is a witness to the version of democracy that the Kashmiris enjoyed after the exit of the Maharaja. The people of J & K S got a "democratic dynastic rule" after the exit of Maharaja with the difference that India decided the dynastic succession. More than five decades down the line after the exit of Maharaja and the supposed end of dynastic rule, democracy continues to be denied in J & K S. So who really gained from the exit of Maharaja?

Sheikh Sahib's persistence of his differences with the Maharaja was unfortunate and resulted in the exit of the Maharaja and the anointment of a new, benign regent. In the eventual analysis, this particular event eroded the bargaining capacity of the people of J & K S. Sheikh Sahib was a popular leader but not an elected leader. He was dependent on the Indians to endorse his popularity. A person dependent on the Indians for endorsement could not be expected to indulge in hard bargaining with the Indians. The endorsement came at a price. The popularity or the political thought of Sheikh Sahib was not a problem for the state of India; the problem was the Maharaja and Sheikh Sahib partly derived his importance for the Indians because of the presence of the Maharaja. Exit of Maharaja suited the Indian interests.

Maharaja's exit paved the way for making the Indian constitution a reference point for evolving the relationship between the state of India and J & K S. Had the Maharaja stayed, the powers of the Maharaja would have been the reference point for deciding the relationship between the state of India and J & K S. The reference point was crucial. Making Maharaja's powers as the reference point would have meant negotiating how much power the Maharaja was willing to cede to the Indians in the evolving power sharing structure between the state of India and J & K S. Making Indian Constitution the reference point meant negotiating the power structure against set menus of concurrent list, state list and union list of the Indian Constitution.

Sheikh Sahib overestimated his stature and indispensability in thinking that he would be able to get the people of the J & K S a fair deal in the power sharing negotiations with the state of India. Sheikh Sahib probably did not fully comprehend the dynamics of the shifting of eras and the altered priorities with the shift of eras. End of dynastic rule and unpopularity of the Maharaja may have been an issue in the pre 1947 era. This was not an issue post 1947. The priority issue in the changed era was to ensure that the wishes of the people of J&KS are decisive in ascertaining their political destiny. Sheikh Sahib refused to comprehend the changed dynamics and instead utilized all his clout to settle issues of the earlier era with the Maharaja. The clout utilized to ensure the exit of the Maharaja was at the cost of the clout of the people of J & K S. Erosion of the clout was reflected in the power sharing structures that emerged and the subsequent events including the arrest of Sheikh Mohammed Abdullah that followed. The erosion of the clout was a permanent feature and left an indelible, negative imprint on the bargaining capacity of the people of J & K S. Sheikh Sahib was instrumental in the exit of the Maharaja, and with the exit of the Maharaja, Sheikh Sahib lost his leverage and for the people of J & K S, the ideological reference point in the bargaining of the power sharing structure between the state of India and J&KS, simply vanished.

Dynamics of Erosion (J & K S)

Institutions, Individuals, Illegality

The Delhi agreement was a power sharing structure between J & K S and the Union of India. It covered ten points. This agreement saw the shift of the focus of the power sharing arrangement from the Schedule accompanying the Maharaja's instrument of accession to the Indian Constitution. Maharaja's Schedule of subjects to which the dominion Legislature could make laws were limited to three subjects and precisely defined. Supreme Court, fundamental rights, the concept of Sadar-i-Riyasat holding office during the pleasure of the President of India and financial integration were not a part of the original concept of terms of accession envisaged by the Maharaja.

The Delhi agreement was the first erosion of the concept of independence of the government of J & K S envisaged by the Maharaja. The Maharaja's concept was one of shared sovereignty, wherein the state of India could not exercise full sovereignty over J & K S. Maharaja's concept was the evolution of an objective relationship between the state of India and J & K S within very clear and precise contours, against extraordinary circumstances outlined in the deed of accession. Delhi Agreement

transformed this objective relationship to a subjective analysis of the level of independence that J & K S enjoyed compared to the other states within the Union of India. J & K S was never in a competition with the other states, neither was the relationship of India with the rest of its states a reference point. Delhi Agreement not only eroded and violated the spirit of the sections of the Deed of Accession pertaining to the relationship with the state of India, but also created a new context rooted in exigencies of the Indian Constitution as opposed to exigencies of the terms of accession.

The erosion process was a stepwise process and utilized leaders of J & K S. Maharaja was seen as an impediment and Sheikh Sahib facilitated his exit; Sheikh Sahib started to assert and Bakshi Sahib relieved Sheikh Sahib; Continuation of Bakshi Sahib seemed to be going against the Indian national interests, Sadiq Sahib made an entry in national interests. There was a correlation between the exit of an individual and erosion.

Maharaja's vision of quasi-sovereign state was eroded by the Delhi Agreement through Sheikh Sahib. Process of erosion of the Delhi Agreement started with the exit of Sheikh Sahib and this work was done by Bakshi Sahib. Any remnants of independence and titular relevance of the government of state of J & K S were finally eroded by Sadiq Sahib. There is very little that India could have done in the absence of a pliable Kashmiri leadership so keen to be utilized.

The Indian methodology used, was to grant relevance, legal sanctity to individuals and develop them as leaders through institutions. The proclamation of 1952 to convene the national assembly, later called the constituent assembly, created an institution which was misused at will to distort the disputed nature of the state and later to erode the relationship of the state with India. The institution of the J & K Constituent Assembly will go down as the source of all the sufferings of the people of J & K S. Contrary to Indian assertions the J&KS Constituent Assembly was not a democratic institution and did not constitute an expression of the wishes of the people of J & K S. Assuming it was a democratic institution, it still could not be substituted for right to self determination as envisaged in the UN Resolutions, "in accordance with the wishes of the people of J & K", explicitly implying a direct ballot to decide on their future and eventual political destiny. This institution was utilized directly or through individuals. All the members of the constituent assembly were elected unopposed. There has been a cyclical pattern. Individuals in J & K S facilitated the Indian state, the individuals were facilitated by institutions and the institutions were facilitated by the Indian state.

1975 Accord (J & K S)

Negating a Struggle

In the 1975 Indira Sheikh accord, there were token references of roll back of the erosion, which never took place. Sheikh Sahib was made the Chief Minister with the support of MLAs of Congress party in the J & K S Assembly. The only ostensible reason for coming back and assuming power in 1975 can only be attributed to a desire for power for the self rather than the nation. Sheikh Sahib's return to power politics on the eroded terms and conditions negated what he all along fought for and weakened the case of the people of J & K S. Sheikh Sahib died in 1982. Had Sheikh Sahib resisted power and not taken over as the Chief Minister and died as a rebel, history of J & K would have been different. Irrespective of the role of Sheikh Sahib during the 1947-1953 period, incarceration for about two decades had made him a hero and champion of the rights of the people of J & K S. In the event of the death of an unrelenting Sheikh Abdullah, the people of J & K S and even J & K M would have got a role model, a political martyr. In the death of Chief Minister Sheikh Mohammed Abdullah, the people of J & K were deprived of a political martyr and a hero and saddled with a regrettable legacy.

Power Sharing Structure (J & K M)

No Room for Erosion- Individuals, Illegality

If the schedule accompanying the deed of accession of the Maharaja is set as the reference point of evolving a power sharing structure between the state of India and J&KS- by the same token the UNCIP resolution on August 13, 1948 could be set as the reference point for evolving a relationship between the state of Pakistan and J&KM. The resolution stated, "Pending final solution, the territory evacuated by the Pakistani troops will be administered by the local authorities under the surveillance of the Commission".[4] The term local authority was clarified by Joseph Korbel, a member of the UNCIP on September 2, 1948: "By local authority we mean the Azad Kashmir people, though we cannot grant recognition to the Azad Kashmir Government".[5]

The contours of such a relationship are clear. The powers would mainly vest with the people of the state of J & K M, except for some subjects which could have been looked after by Pakistan, by consent of the people of J & K M. In practice quite the opposite happened. The relationship that emerged was based on power and consent, both being centralized in Islamabad.

The role of Sheikh Sahib and National Conference in J & K S was replicated by his former comrades and his former party viz. the Muslim Conference, in the state of J&KM. Chaudhry Abbas has perhaps played the most negative role and in pursuit of power for the self, established a tradition of depleted power sharing structure between J & K M and Pakistan. Differences between the various sections of the leadership in J&KM played a crucial role in the power sharing structure that emerged. Chaudhry Abbas Sahib, a migrant leader from Jammu with no base in J & K M was keen to ensure that no democratic institutions are developed in the state of J & K M. The reason or the excuse put forward was that the main objective of the J & K M government was liberation of the other part of J & K and that democracy would mean dilution of the efforts of the government. In J & K S the pattern of erosion was institutions, individuals and illegality. In J & K M no institutions were used.

In perhaps the most bizarre short cut, rather than go through the arduous task of creating institutions, Pakistan constitutionally bestowed sanctity to an individual or any individual, who happened to be the president of Muslim Conference. By virtue of being the incumbent president of the Muslim Conference, Chaudhry Sahib was constitutionalized and all constitutional powers to appoint president of J & K M, sack president of J & K M, hold the president of J & K M accountable were invested in him, in his capacity as the head of the Muslim Conference. Pakistan also formed a Ministry for Kashmir affairs which was supposed to be a mode of liaison with the state of J & K M. Theory does differ from practice and it differed rather drastically in J & K M. The supposed mode of liaison was transformed into a humiliating relationship, where all the powers were vested with the Ministry and the local government became a servile tool of the Ministry. The president of government of J&KM, supposed to liberate the other part of J & K would personally receive a joint secretary of the Ministry or a Deputy Secretary of the Ministry at Kohala and present a guard of honour to the dignitaries. This is perhaps the best indicator of the power sharing structure that emerged in the earlier era. The initial era of the power sharing structure evolved within the constraints of a constitutionalized Chaudry Sahib at one end and the Joint Secretary of Ministry of Kashmir Affairs at the other end.

There has been no erosion because there was no room for erosion in the power sharing structure. The arrangement that emerged was a highly centralized version of power sharing structure. In fact things have improved with the passage of time. Despite the improvement, the current power sharing structure is still inequitable and incompatible with the special status of J&KM. The nomenclature is misleading. Under the fig leaf of nomenclature of glossy titles of President, Prime Minster- the

government of J & K M is still a government bereft of real power and authority. Power and authority is still wielded by the Kashmir Council and the civil servants sent from Pakistan.

Static Dimensions of History

Fifty seven years down the line some institutional and behavioural dimensions of history have remained static. The mindset of an average Indian or a Pakistani still nourish visions of destruction for each other; the two states are still obsessed with painting demonic versions of each other through their state media; the domestic politics still gets addressed by whipping up hostile sentiments against each other; the bureaucratic institutions are still able to prevail over political institutions in both India and Pakistan on matters pertaining to the J & K conflict; the two countries are still mired in bilateralism and keen to pursue a resolution in exclusion of the people of J&K; the leadership in both parts of J & K is still developed by the Indian and the Pakistani state; management of the people of J & K rather than engagement of the people of J & K is still the guiding principle for both the states; the J & K leadership still exudes contempt and disdain for the very people that they purport to represent; the legacy of internecine war of attrition between various sections of leadership in J&K still continues; the internal dimension is still used to power the external dimension; the clout of the people of J & K still accrues to either India or Pakistan; despite the struggle and the sacrifices attempts are still on to isolate and marginalize the nationalist segments of the leadership in J & K; the reference point in the resolution process still continues to be Indian or Pakistani interests and not aspirations of the people of J & K;

Pakistan has been able to manage a relationship with its part of J & K, while India has failed and cost of its success in holding on to J & K S is close to a lakh of people killed in the violent conflict since 1989; the Indian state still seems to react to violence rather than to aspirations. The list could go on and on. As we move on to the following chapters, the discernible shadow of the behavioural and institutional dimensions of history will be very visible in every aspect.

1) Peace and Security Section of the Department of Public Information in cooperation with the Department of Peacekeeping Operations. © United Nations 2005, *http://www.un.org/Depts/dpko/missions/unmogip/index.html*
2) Sethi R.P, "Commentary on the Constitution of J&K", Ashok Law House, New Delhi (2005)
3) Ibid.

4) UNICIP resolution, August 13, clause A-3
5) Khan Sardar M.Ibrahim, "The Kashmir Saga", p.127.

Chapter 2

Psychological and Reality variables

Flexibility

Psychological Barriers to Flexibility in J & K Conflict

•The sentiment

► Sentiment for Independent Homeland ► Sentiment for Pakistan ► Sentiment for India ► Relevance of Sentiment ► Sentiment and leadership

•Aspirations or Grievances •Social Sanctity of Violence •Sanctity of Sacrifices •Concept of Betrayal •Perceived Futility of Dialogue •Politics of Expectations •The Mindset-Psychological Captivity

Reality Variables

•Generational Contours of the Dispute •Internal Dimension and External Dimension

•The Clout Factor

► Clout of the Leadership of J & K (External Dimension) ► Clout of Sections of Leadership within J & K (Internal Dimension)

Violence and Politics

Transformation of Society

Social Stigmatization of Violence

Ending Violence or Establishing peace

Reality in its various shades

•Reality of India •Reality of Pakistan •Reality of Violence •Reality of Sacrifices •Reality of Fatigue •Reality of Impending Regionalization •Reality of Leadership •Reality of Hype •Reality of International Relations •Reality of Societal Aberrations •Reality of the Time Factor •Reality of Phased Approach •Reality of History of Distrust and Hostility •Reality of "Everything or Nothing"

PSYCHOLOGICAL & REALITY VARIABLES

The J & K conflict has often been viewed or analyzed in a political perspective, in isolation of the psychology inherent in the issue. Perhaps the aspect which most influences a conflict to be intractable is the interplay between subjective/objective factors of a conflict, i.e. the psychological dynamics influencing how parties to the conflict approach and respond to the experience of conflict. The psychology of the J&K conflict is as important as the politics of the J & K conflict. Political aspects of the J&K conflict symbolize the problem; psychological aspects depict the invisible barriers to a solution. Identification and analysis of these invisible psychological factors is imperative and so is the identification of the prevailing realities. While the psychological factors have the propensity to wander far off from reality, explicit enumeration of realities defines the constraints of the scope of psychological deliverance. Transformation of the 'psychological barriers to solution' into 'psychological facilitators to solution' would mean finding an optimal trade off between psychological and reality variables.

We traverse through various concepts of psychological and reality variables of the J & K conflict in an attempt to enhance the understanding of the conflict and its sources.

Flexibility

The J & K conflict typifies a stalemate in which all possible avenues of resolving a dispute have been exhausted. Wars have been fought, negotiations have been carried out, pacts have been signed, an armed movement is still on and yet a decisive outcome is still elusive. There is a growing perception that sticking to stated positions by all parties is going to further suck the dispute into an indecisive state. Solution to the

dispute within the stated positions seems very unlikely. Decisive efforts for solution would mean inward movement away from the stated positions by all parties.

This implies exhibition of flexibility i.e. dilution of claims on J & K by all the parties. Generating consensus on flexibility is difficult for all the parties given the history of the dispute and the emotional involvement of the peoples of all the parties. In an institutionalized and hierarchical set up like India and Pakistan flexibility by the government carries with it an aura of respectability and authority. An institutional setup can provide political justification to flexibility and irrespective of the dissenting voices put forward an institutionalized concept of flexibility.

This is sadly lacking in the fragmented nation of J & K, overwhelmed by conflict and the spill over of conflict, where the concept of institutionalized flexibility is missing because of the absence of an institutionalized authority viz. a leadership backed by desired levels of moral and political legitimacy to justify flexibility. This is a part of the problem which could be overcome by various forms of democratic participation. The bigger problem is the negative pressures on leadership. Conflict in J&K has created its own barriers to solution and flexibility constitutes a stigma. Flexibility is seen as an act of betrayal. The concept of flexibility is an exogenous variable. It does not fit into the current political philosophy of the people of state of J&K- people overwhelmed by conflict and consumed by emotions of anger and distrust. The advocacy of flexibility is confined to either some strands of leadership in J & K or academic debates. Despite the scale of conflict and the sufferings inherent in a conflict, flexibility is yet to find mass acceptance. For flexibility to prevail- it would have to transform into an acceptable concept and pressures for flexibility would have to emanate from within the people of J & K. This would require identifying the invisible psychological barriers that are mainly a by product of the conflict.

Psychological Barriers to Flexibility in J & K Conflict

The whole state of J & K is the subject of the dispute. However the intensity of the psychological concepts differs across the two parts of the state. J & K has been in the midst of a bloody conflict for the last seventeen years. Active political espousal and its transformation into a violent espousal, has originated from J & K S, while J & K M had a passive role in facilitating the espousal. The psychological barriers are most intense in J & K S. The main thrust in analyzing the psychological barriers would be on J & K S.

The Sentiment

The word sentiment is a psychological translation of the political concept of right to self determination. It is an indicator of the political preferences of the people of J&K. The prevailing political sentiment of a majority of the people of J & K S has been against the concept of continuation of the present political arrangement with the state of India. This is a harsh political reality. The sentiment too has undergone changes especially in the last seventeen years, but the dimensions pertaining to India remain largely unchanged. The sentiment for an independent homeland has prospered and seems to be the preferred majority choice.

Sentiment for Independent Homeland

This particular strand of sentiment has prospered and the majority of the population in J & K today seem to subscribe to the concept of an Independent homeland. Demands for an independent homeland date back to the origin of the J & K conflict. Initially perceived as a utopian aberration, the concept of an Independent homeland has transformed into a political ideology with mass acceptance. The current destination of the sentiment is indicative of the desire to maintain political equidistance from both India and Pakistan.

Sentiment for Pakistan

Sentiment for Pakistan has historically been a mix of politics and emotions. Large sections of the population of J & K S have traditionally exhibited emotional bonding for Pakistan. Politically a significant section of the population has shown inclination for being a part of Pakistan. Similarly a large section of the population in J & K M has exhibited inclination for being a part of Pakistan. The last seventeen years have shown a gradual erosion of the political aspects of the sentiment, in J & K S. While large sections of the people of J & K S may still emotionally bond for Pakistan, the sentiment for being a part of Pakistan may have shown a decline. But the sentiment for Pakistan in the state of J & K is by no means insignificant.

Sentiment for India

India has never had a favourable sentiment among the majority sections of the population in J & K. The problem is perhaps the most chronic in the Kashmir valley which is under the Indian administration. India and Kashmir have always meant two different entities in Kashmir. Kashmiri psyche has somehow resolutely refused to

register the integration of these two entities. The only difference today is that intensity to agitate or adopt violent means to defy the integration attempts by India may have been diluted significantly in the last seventeen years. Silence or absence of overt defiance by the war weary Kashmiri should not be treated as a change in the sentiment. The consent to integration is as elusive as it can be. The Indian sentiment is however prevalent among significant sections of the population in the Jammu region and the Ladakh region.

Relevance of the Sentiment

If history is a witness to the presence of the dispute, sentiment is the main cause of relevance of the dispute. A realistic evaluation of the variance of the sentiment and the majority nature of the sentiment for an independent homeland are imperative inputs in quest for any resolution process. The current phase of dialogue and negotiations is a derivative of the sentiment. Post 1989, the sentiment has acquired a central role in reviving a dispute, which was seen as defunct and settled by default. The sentiment would be a relevant factor to assess the reference point in any process of accommodation.

Sentiment and Leadership

In J & K the sentiment is the cause of the leader; the leader is not the cause of the sentiment. Even separatist leaders who advocate full adherence to the sentiment are mere advocates. The sentiment is likely to prevail even if all the leaders were to abandon its advocacy. This is perhaps the biggest impediment to flexibility. Leaders are rarely tempted to be flexible for the fear of getting irrelevant. The rush in the main stream camp to try and get identified with the sentiment, despite accepting the finality of accession is an indicator of the potency of the sentiment. Sentiment is the most important variable in the resolution process and the impotence of the J & K leadership in moulding the sentiment makes it an inflexible variable as well. The ultimate test of the J & K leadership lies in being able to mould the sentiment into an achievable form.

Aspirations or Grievances

It is of vital importance to make a distinction between grievances and aspirations. Aspirations of the people of J & K are a measure of the political sentiment. They cannot be passed off as grievances. Grievances have micro parameters and could pertain to incompatibility with some aspect of the political system; aspirations have macro parameters and pertain to incompatibility with the

political system itself. Aspirations embody an urge for a paradigm shift The conflict in J & K is a result of unfulfilled aspirations and not unfulfilled grievances.

Social Sanctity of Violence

The espousal of the sentiment from 1947-1989 was restricted to political means. Around 1989 an armed movement started using violent means for achieving political objectives. It manifested in the form of attacks on the Indian security personnel stationed in J & K S. Initially the acts of violence by the militants were neither condemned nor condoned by the people of J & K S. However with due passage of time it dawned on the people that young Kashmiri boys had taken up arms and an armed movement had finally started. The phase of ignorance transformed into a phase of glorification of the armed movement. An entire population began to rally behind the militants and held massive rallies in their support. The militant soon became a symbol of defiance and the ultimate instrument in the achievement of the political objectives. The reluctance of the Kashmiri society to condemn the violent attacks and instead condone and glorify it heralded the era of social acceptability of violence as of mode of achieving political objectives. As the Indian security forces moved in to quell the armed movement fatalities of the young Kashmiri militants began to rise and the perception of a young Kashmiri militant out to sacrifice his life for the sake of the nation conjured up images of heroism and valour. An aura of respectability and invincibility started to be attributed to the gun and the gunman. After social acceptability the armed movement began to enjoy social sanctity in the J & K society. The civilians began to perform over ground duties for the armed groups as a matter of pride and duty for the nation.

The concept of conferring social sanctity to the armed movement was a very important factor for the J & K armed movement to survive, sustain and move on. It would have been very difficult for the armed movement to sustain, had the J & K society clubbed the political aspirations of the young men wielding the gun with criminal tendencies or terrorism. The spread of sanctity was much beyond the domain of an armed movement and any utterance related to any sphere of society by the members of the armed groups enjoyed unchallenged sanctity and conversely adverse utterances related to any sphere of society attracted unchallenged stigma. However, with the passage of time there was a spill over of the armed movement onto spheres of life other than politics. The levels of social sanctity did not remain static and showed a downward trend. It is unlikely that violence as on date enjoys a similar degree of social sanctity as it enjoyed at the onset of the armed movement. There has been

erosion but violence still enjoys significant levels of social sanctity. This makes violence a politically significant variable, in the resolution process.

Sanctity of Sacrifices

As the armed movement progressed, gun battles were a frequent occurrence. The fatalities were no longer confined to the combatants and large numbers of civilians were also killed in the conflict. Typical of conflict areas, an environment of suspicion and hostility exacerbated the matters and J & K S was transformed into a war zone. This meant the entire population being subjected to check points along the roads, mass arrests, crackdown on civilian areas, torture and very soon the whole population was sucked into the conflict. Every J & K S citizen had a tale of torture or arrest or indignity while being frisked at a check point. The sufferings, the fatalities, the indignity in the last seventeen years have institutionalized as the sacred bank of sacrifices of the nation and the J & K society accords great reverence to these sacrifices. It has assumed a form of J & K pride. The concept of sacrifices is politically sacred and is seen as a glorious summation of a defiant struggle and pain. Sacrifices are seen as a form of sacred national investment in the context of certain set of political objectives. The concept of sacrifices and its sanctity is a barrier to a realistic reconciliation of the achievable and the desirable.

Concept of Betrayal

The concept of betrayal by the leadership is a social obsession in J & K. The distrust in the leadership has historical origins, and there is a perception that the present state of affairs is a result of history of betrayals at the hands of an insincere J&K leadership. The conflict and the toll of fatalities have further impeded and constrained, rational thinking under a crippling burden of the sacred concept of sacrifices. The investment for the nation in terms of sacrifices is perhaps the highest ever in history and the society seems to have been gripped in a state of insecurity fearing a compromise out of sync with the scale of sacrifices. The society wants an ideal utilization of the human investment. The threats of labels of treachery and betrayal have constrained the scope of leadership in rational deliverance.

In an environment of distrust and societal fragmentation, the actual definition of betrayal is blurred and vague. The leadership in J & K has further exacerbated the issue by exploiting the concept of betrayal for trivial, internecine battles within the leadership. The sense of insecurity in the society stands highlighted by the frequent accusations of betrayal by the leaders. Betrayal would continue to be a barrier as long

as the leadership does not resist in using this concept against each other. Society in turn would have to evaluate the costs incurred as a result of erecting presumed barriers to realistic reconciliation.

Perceived Futility of Dialogue

The credibility of the institution of dialogue to resolve conflict in J & K does not have desired levels of acceptability. It is once again rooted in history. There is a perception that every dialogue process with the state of India has eroded the independence of relationship with the state of India. Dialogue is synonymous with the concept of erosion of independence and thereby synonymous with the concept of betrayal. The perceived lack of sanctity of the institution of dialogue has serious ramifications for the establishment of peace. The alternative to dialogue is violence. The onus of making dialogue more relevant and imparting a semblance of sanctity to it is mainly on the state of India. The state of India would have to refrain from utilizing the institution of dialogue to gain short term benefits, ignoring the costs incurred in the long term by creating a perception of futility of the institution of dialogue.

Politics of Expectations

Resolving conflicts essentially needs a basic minimum amount of trust between the conflicting parties. Governments across the world generate trust or distrust on the basis of the track record of difference in words and deeds. The state of India does not have a favourable perception in J & K about its intentions to match words with deeds. There is a perception that the state of India has never fulfilled any promises pertaining to resolution in the past and is unlikely to fulfil any promises pertaining to resolution in the future. **People in J & K do not expect the state of India to deliver. The assumption is that the state of India has not delivered in the past and will not deliver at present or in the future. This is a dilemma which can be resolved only by the state of India.** Irrespective of the veracity of the perception, there is an urgent need for the state of India to come across as being sincere in resolving the dispute, and making a clean break from the past. Failure by the state of India to inspire confidence in J & K about its intentions to pursue a sincere process of dialogue would mean further endorsing the sanctity and inevitability of the alternative, violent modes of conflict resolution.

The Mindset- Psychological Captivity

The concept of psychological captivity is perhaps a way of expressing the cumulative sum of the impact of the psychological barriers. The sentiment, the social sanctity of violence, the sanctity of sacrifices, the concept of betrayal, the concept of futility of dialogue, politics of expectations have all reinforced each other to produce a societal mindset which is psychologically captive to these concepts. The complex mix of the rights and wrongs of politics and their overlap on society has pushed the society in a state of psychological captivity, characterized by political indecision and insecurity, fearing the risk of stigma. These concepts are deeply embedded in the psyche and releasing the societal mindset from the psychological captivity would mean comprehension of the intensity of these psychological concepts and levels of psychological deliverance at par with the levels of intensity.

Reality Variables

Generational Contours of the Dispute

J & K conflict is not a product of the current generation. The present generation of the Indians, Pakistanis and J & K people have inherited the dispute from the previous generations. The presence and persistence of the dispute in an intractable state indicates the failure of the previous generations to resolve this dispute. The process of resolving the dispute by the previous generations has not been restricted to civilized mode of conflict resolution and has included wars, armed movement and development of nuclear weapons. Attempts to resolve the dispute spread over generations have accumulated their own set of unwanted and excess baggage, on to the J & K conflict. Generations have passed on tales of distrust and betrayal at the table and thousands and thousands of fatalities on the ground have endorsed these tales. The present generation has inherited a dispute embedded with generational hostility. The hostility has intensified with every passing generation and has become institutionalized. The present generation will have to take account of the two distinct dimensions of the J&K conflict- the dispute and the institutionalized hostility. The current levels of institutionalized hostility are unlikely to sustain a resolution specific dialogue. It is imperative to construct a model for conflict resolution based on resolving the dispute in the long term and diluting the hostility in the short term. This would entail an interim era of reconciliation of realities and a phased approach of conflict resolution.

The new generation is already showing signs of a distinct mindset. Positive indications of peaceful, dignified coexistence are emanating and the trend is bound to grow stronger. The new era in the region is increasingly being defined by high literacy rates, easy accessibility to media, regionalization, more exposure in a global world, and higher per capita. Well-informed, economically prosperous, globally conscious members of the coming generations are likely to translate into emancipated and secure decision makers of the future. They might be better placed to resolve the dispute. The present generation has the option of providing a constructive setting for the resolution at a future date, by diluting the hostility. Other option is to keep the variables of hostility and dispute unchanged and bet on the new generation to resolve the issue. Yet another option is to facilitate the unending vicious circle of hostility by vitiating the environment, adding new tales of treachery, eroding the sanctity of the institution of dialogue, utilizing the dispute for short term benefits on the domestic front and setting back the date for a possible resolution by decades. If the present generation is not emancipated enough, liberated enough to resolve the issue- the least it can do is to muster enough moral courage to pass on the dispute to the coming generations, whilst setting in motion an evolving environment of sanity and decreased hostility.

Internal Dimension and External Dimension

There is an internal and an external dimension to the J & K conflict. Internal dimension pertains to the parameters of the relationship between the state of India and J & K S or parameters of the relationship between the state of Pakistan and J & K M. The external dimension pertains to the policies of India or Pakistan pertaining to the espousal of their respective stands on the J & K conflict internationally and with each other. Irrespective of the differences of the state of India and the state of Pakistan in perspectives on the J & K conflict, both the states have a convergence of views in using the external dimension in isolation of the internal dimension in their efforts to pursue their respective perspectives on the J & K conflict.

There is an armed movement going on in J & K S for the last seventeen years. The Indian attempts to control conflict has been confined to operational means i.e. countering violence through their security apparatus, diplomatic pressure on Pakistan to stop abetting of violence in J & K S, formal and informal dialogue with Pakistan to stop abetting of violence. The thrust has been on externalizing the cause of the conflict and externalizing the solution to the conflict. All the efforts have been channelled through the external dimension, reposing faith in the externals to provide a solution of a problem most possibly rooted in the internals. The internal component of the

conflict and the power of the internals in the resolution process have been completely ignored. A balanced trade off between the internal dimension and the external dimension could have possibly resulted in a comparatively desirable outcome. There is a reluctance to engage J & K S as equal partners in peace and resolution.

Pakistan's case is a bit different. Their formal policy stand is that the ongoing conflict is essentially a product of the internals and that any solution would have to be rooted in the internals i.e. any solution would have to be in accordance with the wishes of the people of J & K. This is the theory part. The practice part is quite different. Their version of the internal dimension is selective and developed and even that selective and developed section of the internal dimension is not formally incorporated in a tripartite dialogue.

There is a sad tradition of the contents of the internal dimension i.e. J & K leadership being developed by the states of India and Pakistan. Despite developing leaders, the two states have so far been reluctant to express complete faith in their respective developed leaderships and involve them in the resolution process. The reluctance seems to be defined by motives of institutionalizing the excusive role of the external dimension i.e. of India and Pakistan in the resolution process.

A series of CBMs pertaining to J & K have been announced and some have even been implemented. J & K was completely unrepresented in the formulation or implementation of the CBMs. Presence if any was confined to ornamental levels. The success of the CBMs was proportional to the level of the involvement of J & K and was confined to an exercise in ornamentation. Despite the magnitude of the change that the CBMs depicted, they failed to evoke popular excitement. Obsessive emphasis of both the states with the externals needs to make way for striking a balanced trade off between the internal and the external dimension.

The Clout Factor

Clout of the Leadership of J & K (External Dimension)

The clout in the negotiation process in the J & K conflict has always been divided between the states of India and Pakistan. Even today these states decide **whether to negotiate, when to negotiate, with whom to negotiate and what to negotiate**. J & K has been formally excluded in the process of negotiations and left bereft of any clout. Both India and Pakistan purport to represent the perspective of J & K. The exclusion of the J & K viewpoint is due to absence of any clout in the negotiating process. It is

the reality of statecraft that while J & K is the land under dispute and the land overtaken by conflict, the inhabitants and the victims of the land have no clout to pursue their viewpoint. The clout in the J & K conflict sadly is a derivative of either territorial control or the military might. State military might or influence on non state military might in J & K dictates the clout in the negotiation process. The clout is not a proportionate derivative of the sentiment. The variance in sentiment is not reflected by proportionate variance in the clout, among different parties to the dispute, in the negotiation process. There is a mismatch between the sentiment and the clout.

The leadership at present in J & K is fragmented. A collective and united leadership of J & K may have been able to exercise some degree of clout in the dialogue process. The fragmented nature of the leadership of J & K has however facilitated the erosion of the clout. Both the states of India and Pakistan have been able to utilize the services of sections of political leadership in J & K for enhancing their respective clout at the cost of the clout of J & K. Clout if any accruing to the leadership of J & K is present indirectly in the form of Pakistani clout or Indian clout. Sincere efforts at establishing peace and resolution would have to recognize the importance of allowing J & K to present its viewpoint in accordance with the wishes of the people of J & K. The variance in sentiment would have to be matched by a proportionate variance in clout in the process of negotiations and dialogue.

Clout of Sections of Leadership within J & K (Internal Dimension)

The clout of various sections of leadership within J & K is again a mismatch. It is not a derivative of the sentiment. The variance in the sentiment means that different sections of leadership in J & K adhere to the espousal of the different strands of the sentiment. The sections of leadership espousing the cause of the majority sentiment should have exercised more clout. This is not the case in practice. In an attempt to secure bigger roles for themselves there has been a tendency among some sections of the leadership in J & K to utilize the services of the states of India and Pakistan. This is the barter process. Clout that could have accrued to J & K in the negotiation process is bartered away in exchange for exaggerated clout for sections of the leadership within J & K. Enhanced clout within J & K for sections of leadership translates into erosion of the clout of J & K in the process of negotiations. Although most of the sections of leadership do exercise significant pockets of support in J & K, exaggerated clout is a result of overt Indian and Pakistani patronization. This has resulted in the crowding out of sections of leadership devoid of Indian or Pakistani patronization. Clout within J & K has become a derivative of degree of patronization by the states of

India and Pakistan. They are in a situation to select sections of leadership which they feel are relevant to their interests rather than the resolution of the dispute. The two states have huge resources and are able to create hype and glare around individuals and parade them as credible representatives of J & K. Both the states have their own versions of representatives of J & K.

The existing asymmetries in clout are a lamentable legacy of history and represent the static dimensions of history. Realistic evaluation and representation of clout in the internal and the external dimension is essential in the resolution process. Misrepresentation will only facilitate deviations from reality and deviations from reality have already incurred huge costs in terms of human lives in J & K. The earlier the states of India and Pakistan try to reconcile with realities of the clout and allow a free flow of clout, the better it would be for the process of dialogue and for the cause of peace. Even the leadership in J & K would have to understand that clamour for roles bigger than their size incurs huge costs on peace and the interests of J & K people.

Violence and Politics

Modes of conflict resolution presently being adopted in J & K can be classified as an armed struggle and a political struggle. The armed struggle justifies use of violence as a mode of resolving conflicts, while the political struggle believes that dialogue and negotiations are the way out in resolving the conflict. The onus of facilitating violence or politics as a means of resolving dispute falls mainly on the state of India. Sincere engagement with the political groups increases the incentives of resolving conflicts through political means. It puts pressure on the armed groups for participation in non violent modes of conflict resolution. Discrediting political elements of leadership by initiating unstructured dialogues bereft of requisite institutional sanctity or accountability harms both the institution of dialogue and the political mode of resolving conflicts. A portrayal of incapability of political elements, the institution of dialogue and concept of negotiated settlement- crowds out the relevance of politics and imparts relevance to the violent mode of resolving conflict.

Transformation of Society

J & K society has historically been a peace loving society with traditions of peaceful coexistence. Non violence has been the essence of the J & K culture. The transformation of a peace loving society into a society which imparts social sanctity to violence is an indicator of the deep rooted structural parameters of the dispute.

According of social sanctity to violence by a peace loving society requires complete societal transformation. This would involve a change in the way the society emotes, reacts to pain and suffering. Endorsement of violence would require an element of dehumanization and immunity towards pain, suffering and basically justification of murder. All these traits are antithetical to the concept of a peace loving society that was prevalent in the pre conflict era in J & K. Emotions of grief exhibited at the times of death, pain, and suffering are innate. **Failure of a society to exhibit these emotions of grief at the sight of violent deaths, suffering, pain would mean the abandonment of innate emotions. This represents transformation of the society in extremes.**

This transformation is a reactive transformation- a transformation in reaction to denial of rights. While the transformation is regrettable, it is an indicator of the intensity of the aspirations of the right to determine political future. Failure of the state of India to feel the intensity of the aspirations or policy of the state of India to deny rights irrespective of the intensity of the aspirations is equally regrettable. It is an indicator of the extremes that a society could traverse in response to delay or denial of rights and the passive role played by the Indian state in facilitating a regrettable transformation of the structural parameters of the J & K S society. Transformation of the societal parameters back to its origins would need fostering of effective, inclusive and transparent political process aimed at realistic realization of the aspirations.

Social Stigmatization of Violence

The concept of social stigmatization of violence is a counter process to the concept of social sanctity of violence. It is a post solution concept and envisages the societal withdrawal of sanctity to violence. It is linked to the concept of transformation of society back to its basic equilibrium. Achieving social equilibrium and thereby would mean deliverance on the political front and facilitating the society in reverting back to its origins of peaceful coexistence and tolerance. Violence can prosper in a state of societal sanctity. Satisfying the political aspirations of the society would mean the end of state of societal sanctity and the start of a state of societal stigmatization of violence.

A distinction has to be made between the supply of arms necessary to sustain an armed movement and the will to use the arms, the conviction to justify the use of arms and the prevalence of a state of social sanctity for use of violence to achieve political objectives. **Availability or supply of arms represents the operational dimension, while the will to use the arms or the conviction or the social sanctity represent the**

structural dimensions of an armed movement. Operational methods of ending violence could mean physical measures- help from the international community or from Pakistan to stop the supply of arms or counter military measures to check supply of arms. The power of the operational measures is limited and can at best be an interim measure and is not a guarantee for peace in the long term. Structural methods would aim at establishment of peace and that would be the domain of the society. Structural corrections operating through the society would make violence irrelevant and unsustainable. It would target the will to use arms, the conviction and the state of social sanctity. And structural corrections are correlated to political deliverance and the people of J & K. Optimal political deliverance could provide the impetus for the society (people of J & K) to structurally shift the social balance, away from violence, in favour of peace.

Ending Violence or Establishing Peace

Closely related to the concept of institutional and structural methods of tackling violence, are the concepts of ending violence and establishing peace. The institutional methods of countering violence could at best aim at a decrease in violence or an end to violence. It is a short term concept, and is a subject of the states and their security institutions. The current strategy of the Indian state is obsessed with ending violence through institutional methods.

Establishment of peace is a long term concept and is in essence a structural response to violence. It aims at long term and sustainable, establishment of peace. Structural methodology is a subject of the society. The society makes the concept of violence unviable and unsustainable. It is a gradual, invisible process and is related to the concept of social stigmatization of the concept of violence. The Indian state has so far refrained to facilitate structural response to violence in J & K S.

Reality and its Various Shades

The people of J & K S would also have to comprehend the existing realities. J&KS is the land where the conflict is taking place. Delay in resolution or a continued state of conflict is going to incur heavy costs on the people of J&KS. While psychological barriers do give an insight into the latent area of the conflict, reality in its various shades would have to be accommodated into the societal mindset in order to make the objectives realizable and achievable.

Reality of India

India has territorial control over J & K S. Despite the turbulent periods of an armed movement and wars with the state of Pakistan, India's grip on the territory is firm and secure. Indian forces are neither going to leave as a result of dialogue nor are they going to negotiate geography on the table. Short of militarily driving the Indian forces away, there doesn't seem any chance of the Indian forces leaving of their own accord. The people of J & K S would have to decide, whether to continue waging a war with seemingly no results or negotiate alternative options of accommodation and coexistence.

Reality of Pakistan

Pakistan has a claim on J & K S and has tried overt, covert forms of warfare, dialogue, international diplomacy to try and secure J & K S. And J&KS stands as elusive for them as elusive as it can get. Their cumulative diplomatic and military clout has almost been exhausted and yet the static J&K equation remains unaltered. Irrespective of the sentiment for Pakistan in J&KS, Pakistan's role in any decisive liberation movement is important. The inability of Pakistan to force a resolution for the last five decades stands translated into incapability of Pakistan to force resolution of its choice. Pakistan would have to decide whether to continue its efforts irrespective of the pain or sufferings or re-evaluate its objectives and capabilities realistically.

Reality of Violence

Violence has been used in overt and covert forms in the last five decades to force a resolution. Even the scope of violence may have peaked. This dispute has seen three wars being fought between India and Pakistan. Since 1989 an armed movement against India is going on in J & K S. The score of fatalities would probably be in excess of one hundred thousand, collateral damage worth billions of dollars, thousands and thousands of widows and orphans and host of other violence related damage- and yet the J & K conflict remains literally where it was in 1947. The futility of violence to enforce a decision on J & K conflict is a reality. **Whether through wars or through armed movement- until one of the parties has a decisive military edge, violence can at best inflict damage not resolution. It can only be a war of attrition not a war of liberation.**

Reality of Sacrifices

People of J & K S were exhorted by their leaders to sacrifice their lives in pursuit of scared objective of attaining freedom. With no malice towards the exhorters the reality is that the power of the sacrifices in attaining our objectives has been grossly exaggerated. The leaders perhaps presumed a highly moral setting against which the sacrifices would exert moral pressures on India and the diplomatic community to intervene and facilitate people of J&K in the resolution process. No punitive action has been initiated by any country or international institution to suggest that sacrifices are having a bearing. And there are no hints of international intervention to stop the blood shed or force India to accept the demands for right to self determination. Even the international human rights organizations are not given unrestricted access into J&KS. The reality after seventeen years of sacrificial toil is that sacrifices are not a guarantee for attainment of objectives. The concept of sacrifices having the power to change the realities on the ground is a fallacy. They have played a role in highlighting the J & K conflict but their exact impact on resolution may not be as decisive. It is important to understand the reality that the role of sacrifices is restricted to highlighting the issue and continued espousal of sacrifices is neither going to highlight it any further nor help in the resolution process. **While the sanctity and reverence for sacrifices will continue to be a cherished asset, it is important to ensure that coming generations of youth are preserved.**

Reality of Fatigue

People of J & K S are a part of the human race and are bound to be governed by the same traits as for other humans. Seventeen years of pro active political and armed movement aimed at secession has taken its toll. The average person in J & K S is tired and fatigued. Violence has left no sphere of life untouched. It would be illogical to assume that a fatigued population would still be able to sustain a resistance movement. While we cannot deny the power of the sentiment but assuming the sentiment to power a fatigued population would be stretching the sentiment to the limits.

Reality of Impending Regionalization

In the current age of globalization pursuit of economic, military, political objectives have seen reorganization of the world into economic, political blocks. The concept of regionalization has seen countries in a region getting together to form regional unions to enhance collective economic, political, military clout. Regionalization in the South Asian region in the near future is a reality.

Regionalization has redefined concepts of sovereignty across the world and would have a similar impact in the South Asian region. The present degree of relevance of concepts of nationalism would see a decline in the event of regionalization. The people of J & K S in particular and the people of J & K in general, would have to assess the relevance of their current objectives in a possible regionalized South Asian regime in the future.

Reality of Leadership

Liberation movements have seen the emergence of leaders across the world. Conflicts provide the perfect settings for leaders to emerge and exhibit attributes of leadership. The conflict in J & K has been marked by the absence of exemplary or inspiring leadership. The leaders in J & K have not led the nation and have instead chosen to be led by the nation. The leaders have crossed all ideological extremes and clung on to the unrealistic and unachievable in order to try and get closely identified with the sentiment. As a result, J & K is saddled with leaders who are slaves of the sentiment and derive their existence from the sentiment and thereby have no role in moulding the sentiment into an achievable form. An added reality is the tradition of developing leaders by India and Pakistan. **Beneath the façade of J & K nationalism emerges the stark reality of the J & K leadership being basically distinguishable as pro India or pro Pakistan. The lack of inspiring and insufficient pro J & K leadership in J & K is a reality.**

Reality of Hype

India and Pakistan are two parties to the dispute which unlike the state of J&K are proper states. They are recognized internationally and have formal relationships with the member states of the diplomatic community. They have relatively huge financial resources and accessibility to all international institutions. This means they are able to beat J & K nation at the hype game. They are able to hype events, market J & K actors at the cost of the J & K nation. The glare created by the hype has meant blinding the onlookers to reality. The gap between the perception and reality has widened too far and perhaps lost view of reality. **They are able to market their own versions of reality irrespective of the unreal content of the marketed versions**.

Reality of International Relations

States are guided by their interests. Legality in accordance with international law is increasingly becoming subservient to the interests of the states. In pursuit of national

interests, states have formed relationships with each other. India is an emerging economic power and military power and its clout in the international arena is on the ascendancy. The international pressure on the state of India to deliver in J & K is bound to be limited and within the constraints of the individual interests of the international community of states.

Reality of Societal Aberrations

Conflict has the propensity to traverse far beyond the domain of its objective. The conflict in J & K has seen the impact of conflict spreading to almost all spheres of human activity. The societal architecture in particular has undergone a change. The use of violence as a means of achieving political objectives has moved beyond the domain of politics and the tendency to use violence in other spheres of social activity is on the rise. A new post conflict society is emerging which seems to have vastly different perceptions of morality and values and different script of rights and wrongs in the society. The pre conflict society was a symbol of values of morality, coexistence, peace, tolerance. These seem to have been abandoned and the societal norms and values are now derivatives of immunity to pain and suffering, dehumanization, intolerance, fear, insecurity. These represent the societal aberrations and corrections would take decades.

People of J & K would have to decide to what extent would they allow the society to drift away. And what would be the relevance of the political objectives if basic societal parameters have been compromised and transformed into an irreversible state in the process.

Reality of the Time Factor

Timing in conflict resolution is very important. Parties to a dispute try to negotiate when they hold some sort of bargaining advantage. The struggle in J&K was so deeply entrenched to emotions that the peak of bargaining advantage might have already passed. Imagine J & K leadership negotiating a settlement in the early nineties when the people of J & K were a major factor. The bargaining advantage would have been much higher than it is at present. The time factor is not to the advantage of the people of J & K. With every passing day it is advantage India and disadvantage J & K. It is important to understand the reality of timing. Delay tactics may be to the advantage of India but can certainly not be to the advantage of the people of J & K. Some parties from J & K S are a part of intermittent, dialogue process with India, while some are averse to dialogue; parties in the process of dialogue with India are

raking up trivial issues which delay talks. This gives an impression of comparative bargaining advantage in favour of the J & K S leadership and all the time in the world being at the disposal of the J & K S leadership to pursue a result oriented dialogue with India. This is not the reality. **The reality of time factor, bargaining advantage, recipients of benefits of delay, reality of fatigue and a host of factors related to correlation between delay and bargaining advantage- need to be understood by the leadership in J & K S in particular.**

Reality of Phased Approach

Conflict resolution is a long and arduous process spread over decades. Start of the negotiation process is not the start of a solution or resolution. There is a lot of pressure in J & K S on elements involved in the dialogue process about the progress of dialogue. Although the pace of the peace process and the institutional involvement of the leadership of J & K is yet to achieve desired levels, expectations of progress from a round of dialogue are not in tune with reality. **There are no "overnight objectives" in the conflict resolution process.**

Reality of History of Distrust and Hostility

Typical of any conflict, a state of hostility and distrust exists between all the parties in the J & K dispute. This is an impediment which can be diluted only with the passage of time. Success of negotiations and dialogue will be subservient to the transformation into a state of civility and mutual trust between the parties to the dispute.

Reality of "Everything or Nothing"

In the layman's language there is a concept of "everything or nothing" in the resolution process. **Getting "everything" would mean full realisation of the sentiment of an independent homeland for J & K. Getting "nothing", would mean continuation of status quo.** Two options of "everything or nothing" suit India fine. They are militarily and politically wedded to the concept of not giving "everything" and this leaves the option of giving "nothing". **Continued espousal of "everything" would ultimately lead to getting "nothing".** Incorporation of the concept of "something" in between the concept of "everything and nothing" is certainly not a concept that the state of India would relish. The concept of "something" is gettable. That would mean deliverance.

Chapter 3

Empirical Evidence

Concept of Federal Solutions

•The Aland Islands Model •The South Tyrol Model •Some other Models •Associated States of New Zealand •Compact of Free Associations •The Hong Kong Model

The Process of Conflict Resolution

•Northern Ireland- "Good Friday Agreement"

► The Dispute ► The Troubles ► Peace Process ► "Good Friday Agreement"

•Analyzing the Negotiation Process •Analyzing the Model •Implementation Process- Post Solution Scenario

"Good Friday Agreement" – Insights into J & K conflict

Federal Solutions – Insight into J & K Conflict

The Hong Kong Model – Insight into J & K Conflict

A Glance at the Indo-Nepal Model

Conclusion

EMPIRICAL EVIDENCE

Conflict is not a universally definable concept. Every conflict has unique parameters, defined by the diverse, local conditions. Disputes leading to protracted conflicts could mean absence of agreement between groups of people or states over a range of issues. Ethnicity, aspirations of statehood, right to self determination, fear of cultural assimilation etc. are a few among the range of areas of disagreement that could give rise to conflicts. A study of peace processes, whether failed or successful, could help in understanding the dynamics of conflict resolution and provide scope for identifying areas of emulation and avoidance.

It has often been said that "the defining issue in international law for the twenty first century is finding compromises between the principles of self-determination and the sanctity of borders[1]". Absence of an optimal trade off between the demands for self determination by sub state entities, and the attempts to maintain territorial integrity by the parent states has thrust self determination conflicts into an irresolvable and irreconcilable state. This has manifested in armed secessionist movements in sub state entities and massive human rights violations, both by the armed movements and the parent states.

Today there are some 140 self determination movements worldwide. Since 1984, over 65,000 people have been killed as a result of the Government of Sri Lanka's attempt to preserve its territorial integrity and secure its sovereign interests against the competing efforts of the Tamil rebels to exercise their right of self-determination and establish a self-governing region within Sri Lanka. In Sudan, nearly two million people have been killed during the war of secession. In Bosnia, 250,000 civilians were killed and over one million displaced in a campaign of genocide carried out by Serbia in response to Bosnia's declaration of independence from the former Yugoslavia[2].

In the period between 1956 and 2002, there were seventy-five instances of states involved in some form of self-determination or sovereignty-based conflict. By 2002,

only twelve of these conflicts had been resolved through uncontested agreements. Another twelve had been resolved through military victory. The remainder were ongoing (twenty-two), or were merely "contained" (twenty-nine), usually as a result of the deployment of international peacekeepers. The average duration of these continuing conflicts is nearly thirty years[3].

The purpose of this chapter is to focus on the concept of solutions, conflict resolution process- negotiations, peace agreement, post solution implementation and conflict variables- human rights violations, involvement of non state armed groups, Truth commissions etc.

First it would focus on some federal solutions in existence around the world, analyzing various theoretical concepts of federal systems and analyzing some models. The motive is to examine the scope of independence and interdependence in federal, power sharing structures that have emerged between federal and federating entities, across the world.

Second, Hong Kong as a model of "independence and power of the government" of Hong Kong within the Chinese sovereignty would be analyzed in detail.

Third, it would focus on the diverse dimensions of conflict resolution process. The Northern Ireland Model would be analyzed in detail.

Fourth, we will take a look at the Indo Nepal model in order to examine the benefits accruing to citizens in a liberal regime of interstate relationship.

And lastly, it would sift through various conflict resolution processes around the world to evaluate the empirical relevance of human rights, truth commissions, involvement of armed groups, multi party format, demilitarization, decommissioning etc. These concepts would be presented in the concluding section.

Concept of Federal Solutions [4]

We look at various federal or confederal solutions and other unique arrangements in existence around the world. The very presence of federal or confederal solutions in most of the cases indicates accommodation, while in some cases they do indicate joint pursuance of interests.

"Of the 160 plus 'sovereign' states in the world today, only ten or eleven are ethnically homogenous, according to Ivo Duchacek, the primary student of the subject". The others are ethnically heterogeneous. Daniel Elazar states in his paper on self and shared rule that accommodation could mean extermination, forced assimilation or for still others to encourage and foster multi ethnic societies. The range of conflicts stretching across the globe dictates the need for some kind of accommodation.

Fifty eight states across the world are involved in some sixty different arrangements involving federal principles in some way to accommodate heterogeneity and right to self determination. Seventeen are federations. Accommodation is a way out to balance ethnic heterogeneity and also to balance the competing claims of nations, intent on maintaining territorial integrity and groups of peoples within these states, intent on achieving right to self determination. Apart from the traditional forms of federation there are a range of emerging forms. The US-Puerto Rican model (a federacy or associated state arrangement), the model of Scotland within the United Kingdom, the model that emerged in Catalonia in the Basque region in Spain- namely autonomous regional government; the kind of arrangement that prevails between Finland and Aaland Islands; the tripartite linguistic regions into which Belgium is divided. The emerging trend of regional regimes; the EEC is an example. There are concosciational arrangements in Netherlands, associated arrangements as those between Bhutan and India, condominiums as in the case of Spain, France and Andorra. The South Tyrol Package or the liberal interdependent relationship between Nepal and India are all models of accommodation of claims or joint pursuit of economic, military, political objectives.

Daniel Elazar provides deep insight into the range of relationships that exists between nations and within nations as a form of accommodation and explores in detail the different types of arrangements.

An arrangement, roughly defined as the constitutional division of powers within a single political entity between a federal government and the governments of the constituent entities, with both having direct contact with the individual citizen. This Daniel Elazar refers to as modern federation.

An arrangement, in which the constituent states retain the better part of their political independence but band together in perpetual union under a common constitution to form a joint government for quite specific and limited purposes, usually defence and foreign affairs. In such arrangements, the new entity combines

elements of shared governance with strong and permanent commitment to maintenance of primordial divisions through constituent states. Switzerland until 1848, and the Netherlands until 1795, were examples of this arrangement. Danile Elazar refers to these arrangements as confederations and asserts that these arrangements are remerging as the new alternative against the backdrop of limitations of the national sovereignty concept. The European Union is an example of this arrangement, except that the primary purpose of binding has been economics rather than political or military objectives. Caribbean Community (CARICOM) and Confederation of Snegambia are other examples. A strong case can be made that UAE is a part of this arrangement.

Arrangements which offer options of self-government to political entities that would otherwise have to forego that possibility, along with democratic, political linkage to another entity, where conditions require maintenance of ties. Daniel Elazar identifies these relationships as a part of the family of federal relationships and defines them as associated state arrangements and federacies. This is an asymmetrical federal relationship usually involving the following:

A perpetual constitutional tie between the federate power and the federacy or associated state ratified by the peoples of both and/or their chosen representatives.

A comprehensive set of governmental institutions for each with a minimum overlapping authority or shared structures.

In federacies, common citizenship, but with specified distinction in rights and duties in some spheres.

Allocation and division in such a way that the federate power preserves control over certain external functions such as foreign affairs and defence, while the federacy or associated state preserves control over internal functions beyond that normally allocated within conventional federations.

Mutual allocation of benefits in away that each partner receives some special benefit in return for foregoing some usual benefit of conventional federal arrangements.

There are presently over twenty functioning federacies in existence. Some like the Netherlands and Curacao are the result of decolonization. Others such as the one between Switzerland and Lichtenstein reflect the association of two political entities that came together for mutual advantages. This link offered a customs union that gave

Lichtenstein needed economic benefits while allowing it to preserve its independence and non republican form of government. Some are relatively new, like the relationship between New Zealand and Cook Islands; Others such as the link between United Kingdom and the Channel Islands, are centuries old. In Finland and the Aaland Islands, regional security considerations have made federacy the only reasonable option serving the basic interests of both the parties. Federacy has proved to be extremely flexible. There is no one common form of federacy. In each case a special institutional framework and set of relationships has developed to meet the specific needs of the parties involved. One of the best examples of federacy is the arrangement between United States and Puerto Rico.

Arrangements which represent a potentially non-territorial form of federalism. These are the consociational arrangements and involve the formal or semi formal constitutional distribution of power among presumably permanent groupings- within a polity. The polity recognizes the existence of permanent groups, provides them with resources for their self maintenance, and guarantees them an equal place in the constitutional system that can only be changed trough constitutional means.

We provide a list of some of the arrangements in existence around the world:

The Aland Islands Model

The Aland Islands Model is a compromise to the satisfaction of all the three parties involved –Finland, Sweden and Aland. Sovereignty is with Finland, but considerable autonomy and system of self-government was given to Aland .The compromise was arrived at through the intervention of "League of Nations", supplemented by an agreement between Finland and Sweden as to how the guarantees are to be materialised. There is a treaty governing the Aland's demilitarization and neutralization to ensure that Islands would not become a military threat to the Sweden. In 1922, Autonomy Act of 1921 was amended to add number of provisions relating to voting rights and acquisition of land. The Aland was given autonomy over internal affairs, but the Foreign affairs remained with the Finland. Aland has its own parliament and reserved seats in Finish parliament. Aland is entitled to discussion in European Union, if the issues under discussion concern matters within its powers. Aland is entitled to 50% use of its revenues. In the same spirit, Finland enacted two

more autonomy laws – on December 28, 1951, and on August 16, 1991, which dealt with issues that have arisen since the accord[5].

The South Tyrol Model

South Tyrol is an autonomous region between Austria and Italy. 70% are German speaking, 26% are Italian speaking and 4% are Latin speaking

Prior to the First World War, South Tyrol was an integral part of Tyrol and belonged to Austria. After war it was annexed by Italy. At the end of the Second World War, people of South Tyrol began a campaign for autonomy, in reaction to fascist policies of cultural assimilation. This led to the signing of the Paris Agreement in 1946. Italy, as per this agreement agreed to give South Tyrol legislative and executive powers. Austria was given minority protective powers. Italy failed to honour the agreement and this led to widespread unrest in the late 1950s. Austria raised the issue at the UN in 1960. UN resolution of 1960 called upon Austria and Italy to engage into negotiations which resulted in an agreement in 1969 approved by the people of South Tyrol. Known as the South Tyrol Package, it "contained all the measures that Italy was to take for the benefit of German-speaking ethnic group in South Tyrol, and a calendar of operations," which was a timetable for the measures outlined in the package and subsequently for the settlement of the dispute with Austria." Between 1960 and 1992, intensive measures were taken to grant autonomy to the region. The conflict was finally resolved in 1992 after the people of South Tyrol and Austrian government had fully examined the implementation of the autonomy package.

Today, South Tyrol enjoys a high degree of autonomy and interacts with the sovereign Austrian regions of North and East Tyrol on a continuous basis. Austria retains post-autonomy protective powers, and in this capacity, continues to monitor the ongoing implementation of autonomy[6].

Some other Models

Another creative example is the Sami Parliamentary Assembly, established in 2000, as a joint forum of the parliaments of the Sami indigenous people who reside in

the northern regions of Norway, Sweden and Finland. The Sami have been demanding greater control over the land, water and natural resources of their ancient homeland. They elect representatives to their own regional parliaments but are now trying to develop a pan-Sami political institution to better protect their rights. The three Nordic countries have all been pulled up by the U.N. for their treatment of the Sami and many issues - such as Norway's decision to allow expanded bombing ranges for NATO warplanes - affect the indigenous population cutting across sovereign state borders. The Sami example is a case of an attempt by a partitioned people to craft meaningful political institutions from below, often in the face of indifference from above.

Similar to the Sami initiative is Basque leader Jose Luis Ibarretxe's proposal for `shared sovereignty and free association' of the Basque region of Spain. Conceived as an alternative to the "blind alley offered by ETA's violence," Ibarretxe's proposal is for the Basque region to remain a part of the sovereign territory of Spain but enjoy the right to establish economic relations with the Basque regions of France, as well as representation in the European Union.

The principality of Andorra is a small, landlocked principality in south –Western Europe, located in the eastern Pyrenees Mountains and bordered by France and Spain. Once isolated, it is currently a prosperous country mainly because of tourism and its status as a tax haven. Andorra has no military force of its own; its defence is the responsibility of Spain and France.

Some of the foreign affairs of Liechtenstein (Since 1923) are handled by the Swiss Confederation, in a loose form of association, although Liechtenstein is otherwise constitutionally separate and independent in all other matters.

Some of the foreign affairs of Monaco (since 1814) are handled by France, in a loose form of association, although Monaco is otherwise constitutionally separate and independent in all other matters.

The foreign affairs of Bhutan, a Himalayan Buddhist monarchy, are handled by the neighbouring Republic, India (since 1971), which thus sort of succeeds to its former colonizer Britain's role as protector, in a loose form of associations, although Bhutan is otherwise constitutionally separate and independent in all other matters.

Associated States of New Zealand

The Cook Islands (Since 1965) and Niue (Since 1974)- Neither is independent and are formally "in free associations" with New Zealand. The residents of these islands are New Zealand citizens. These territories are not treated by the UN as independent states, although the Cook Islands have the right to declare independence, are parties to several international conventions (such as the convention on children's rights) and regional organisations, and already maintain diplomatic missions in other countries.

Compact of Free Associations

The Compact of Free Associations (COFA) defines the relationship that three sovereign states, The Federated States of Micronesia (FSM), The Republic of the Marshall Islands (RMI) and the Republic of Palau have entered into associated states status with the United States.

Now sovereign nations, the three freely associated states were formerly part of the Trust Territory of the Pacific Islands, a United Nations trusteeship administrated by the United States Navy from 1947 to 1951 and by the United States Department of the Interior from 1951 to 1994.

Under these free association compacts, the United States provides guaranteed financial assistance over a 15 year period in exchange for certain defence rights. The U.S also treats these nations uniquely by giving them access to many US domestic programs. The freely associated states are all dependent on U.S. financial assistance to meet both government operational and capital needs. The office of Insular Affairs administers this financial assistance. The freely associated states also actively participate in all office of insular Affairs technical assistance activities.

In 2003 , the compacts between the RMI and FSM were renewed for 20years. These new compacts provided US $3.5 billion in funding for both nations US $30 million was also provided to American Samoa, Guam, Hawaii, and the Northern Mariana Islands in "Compact Impact" funding. This funding helps the government of these localities cope with the expenses of providing services to immigrants from the RMI, FSM and Palau. The US usage of Kwajalein Atoll for missile testing was renewed for the same period. The new compacts also changed certain immigration rules.

Puerto Rico (Since 1952) and Northern Mariana Islands (Since 1986) are non-independent states and freely (Willingly) associated with the USA. The name sounds similar to "free associations" (particular in Spanish) and erroneously suggests that Puerto Rico has international sovereignty and ultimate control over its territory, which is not the case. This is a constant source of ambiguity and confusion when trying to define, understand and explain Puerto Rico's political status. For various reasons Puerto Rico's political status is different from that of the pacific islands, which has full right to conduct their own foreign relations, while the common wealth of Puerto Rico is a territorial status subject to United States Congress, authority under the constitution's Territory clause. Puerto Rico has right to full independence but at last referendum (1998) majority of population voted for none of the above.

The Hong Kong Model [8]

Hong Kong is currently a Special Administrative Region of the People's Republic of China in accordance with the provisions of Article 31 of the Constitution of The People's Republic of China resumed the exercise of sovereignty over Hong Kong on 1 July 1997. Hong Kong's current capitalist system is to remain unchanged for fifty years from 1 July 1997.

The Hong Kong Special Administrative Region is directly under the authority of the Central People's Government of the People's Republic of China. The Hong Kong Special Administrative Region enjoys a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government.

Apart from displaying the national flag and national emblem of the People's Republic of China, the Hong Kong Special Administrative Region can use a regional flag and emblem of its own.

The Hong Kong Special Administrative Region is vested with executive, legislative and independent judicial power, including that of final adjudication.

The Government of the Hong Kong Special Administrative Region is composed of local inhabitants.

The power of final judgment of the Hong Kong Special Administrative Region is vested in the court of final appeal in the Hong Kong Special Administrative Region.

The Hong Kong Special Administrative Region Government can employ British and other foreign nationals previously serving in the public service in Hong Kong, and can recruit British and other foreign nationals holding permanent identity cards of the Hong Kong Special Administrative Region to serve as public servants at all levels, except as heads of major government departments, including the police department, and as deputy heads of some of those departments.

The social and economic systems in Hong Kong are different from that of The People's Republic of China. Rights and freedoms, including those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of correspondence, of strike, of choice of occupation, of academic research and of religious belief are ensured by law in the Hong Kong Special Administrative Region. Private property, ownership of enterprises, legitimate right of inheritance and foreign investment is protected by law.

The Hong Kong Special Administrative Region deals on its own with financial matters, including disposing of its financial resources and drawing up its budgets and its final accounts. The Hong Kong Special Administrative Region reports its budgets and final accounts to the Central People's Government for the record.

The Central People's Government does not levy taxes on the Hong Kong Special Administrative Region. The Hong Kong Special Administrative Region uses its financial revenues exclusively for its own purposes and they are not handed over to the Central People's Government.

The Hong Kong Special Administrative Region maintains the capitalist economic and trade systems previously practised in Hong Kong. The Hong Kong Special Administrative Region Government decides economic and trade policies on its own.

The Hong Kong Special Administrative Region has the status of a free port and practises a free trade policy, including the free movement of goods and capital. The Hong Kong Special Administrative Region can on its own maintain and develop economic and trade relations with all states and regions.

The Hong Kong Special Administrative Region is a separate customs territory. It can participate in relevant international organisations and international trade agreements (including preferential trade arrangements), such as the General Agreement on Tariffs and Trade (now the WTO) and arrangements regarding international trade in textiles. Export quotas, tariff preferences and other similar

arrangements obtained by the Hong Kong Special Administrative Region are enjoyed exclusively by the Hong Kong Special Administrative Region. The Hong Kong Special Administrative Region has authority to issue its own certificates of origin for products manufactured locally, in accordance with prevailing rules of origin.

The Hong Kong Special Administrative Region Government can decide its monetary and financial policies on its own.

The Hong Kong dollar is the local legal tender and is freely convertible.

With the exception of foreign warships, access for which requires the permission of the Central People's Government, ships enjoy access to the ports of the Hong Kong Special Administrative Region in accordance with the laws of the Hong Kong Special Administrative Region.

The Hong Kong Special Administrative Region has its own system of civil aviation management in Hong Kong.

The Hong Kong Special Administrative Region Government decides its own policies in the fields of culture, education, science and technology.

Subject to the principle that foreign affairs are the responsibility of the Central People's Government, representatives of the Hong Kong Special Administrative Region Government can participate, as members of delegations of the Government of the People's Republic of China, in negotiations at the diplomatic level directly affecting the Hong Kong Special Administrative Region conducted by the Central People's Government. The Hong Kong Special Administrative Region may on its own, using the name "Hong Kong, China", maintain and develop relations and conclude and implement agreements with states, regions and relevant international organizations in the appropriate fields.

Foreign consular and other official or semi-official missions are established in the Hong Kong Special Administrative Region with the approval of the Central People's Government. Consular and other official missions established in Hong Kong by states which have established formal diplomatic relations with the People's Republic of China can be maintained.

The maintenance of public order in the Hong Kong Special Administrative Region is the responsibility of the Hong Kong Special Administrative Region Government.

The Central People's Government authorises the Hong Kong Special Administrative Region Government to issue, in accordance with the law, passports of the Hong Kong Special Administrative Region of the People's Republic of China to all Chinese nationals who hold permanent identity cards of the Hong Kong Special Administrative Region, and travel documents of the Hong Kong Special Administrative Region of the People's Republic of China to all other persons lawfully residing in the Hong Kong Special Administrative Region

Entry into the Hong Kong Special Administrative Region of persons from other parts of China is regulated.

The Hong Kong Special Administrative Region Government applies immigration controls on entry, stay in and departure from the Hong Kong Special Administrative Region by persons from foreign states and regions.

The Process of Conflict Resolution

Northern Ireland- "Good Friday Agreement"[9]

In 'The Good Friday' Agreement, we would be focussing on:

Process of Negotiations

The Model (Peace Agreement)

Process of Implementation- post solution

All the three aspects of peace process mean traversing through an arduous and seemingly intractable maze of conflict specific elements of hostilities and distrust. Overcoming these elements has proved a difficult task for peace makers across the world.

The Dispute[10]

The conflict in Northern Ireland, which has killed thousands, has political and religious roots that are centuries old.

In modern times the conflict has centred on opposing views of the area's status. Some people in Northern Ireland, especially the mainly Protestant Unionist community, believe it should remain part of the United Kingdom. Others, particularly

the mainly Catholic Nationalist community, believe it should leave the UK and become part of the Republic of Ireland.

Since the 12th Century constant revolts challenged the often brutal British rule of Ireland, climaxing in the 1916 Easter Uprising in Dublin. It sparked a chain of events leading to civil war and partition of the island in 1921. In the South, 26 counties formed a separate state, while six counties in the North stayed within the UK.

Over successive decades the Catholic minority in the North suffered discrimination over housing and jobs, which fuelled bitter resentment. Sir James Craig, the first Prime Minister of Northern Ireland described the Northern Ireland parliament as 'a Protestant parliament for a Protestant people'. This is an indicator of the deep ethnic animosity which got institutionalized over the decades.

The Troubles[11]

In 1969, Catholic civil rights marches and counter-protests by Protestant loyalists (as in "loyal" to the British Crown) spiralled into violent unrest. British troops were sent in but soon came into conflict with the Provisional IRA (Irish Republican Army). Loyalist paramilitary groups responded with a campaign of sectarian violence against the Catholic community. As the situation worsened, Northern Ireland's parliament was suspended and direct rule imposed from London in 1972.

Throughout the 1970s, 1980s and early 1990s paramilitary groups waged violent campaigns to pursue their goals. The IRA carried out deadly bomb and gun attacks in Britain and Northern Ireland that targeted police, soldiers, politicians and civilians. Loyalist paramilitaries targeted Catholics in "tit-for-tat" killings. Police and British forces tried to keep order, sometimes amid controversy, such as the alleged co-operation of some undercover units with loyalist groups.

Peace Process[12]

In the early 1990s negotiations took place between political parties and the British and Irish governments. After several years of talks, IRA and loyalist ceasefires held and in 1998 the "Good Friday" agreement was signed. It set up a power-sharing executive, with ministerial posts distributed by party strength, and elected assembly. The deal was backed by voters in referendums in Northern Ireland and the Republic, which scrapped its constitutional claim to the North. Problems remain as devolution has been suspended several times since it began. It was last suspended in October

2002. In September 2005 the arms decommissioning body confirmed IRA had put all its weapons beyond use. But Unionists said they remained sceptical without any photographic proof. A deadline has now been set by the government for the Northern Ireland Assembly to resolve its differences and resume power-sharing by 24 November 2006.

"Good Friday Agreement"[13]

The Agreement was signed on 10 April, 1998, and is known as the "Good Friday Agreement". It signalled the culmination of an arduous path of multi party negotiations within Northern Ireland and negotiations with United Kingdom and the Republic of Ireland. Negotiations lasted for more than twenty two months after traversing through the travails of a multi party set up, against the settings of a history of distrust, hostilities and violence. It signalled the victory of the concept of dialogue, negotiations, democracy over violence as a means of conflict resolution. There have been difficulties in the implementation process and the differences in interpretation but by and large the "peace writing on the wall is clear".

The Good Friday Agreement represents the most significant shift in party political positions since the partition of Ireland in 1921. For the first time the British and the Irish governments have radically addressed the conflict over opposing nationalisms by providing a framework within which the principle of consent will decide any future constitutional change[14]. It has been designed to transform a violent war over self determination into a political conflict where negotiations rather than gun is the final arbiter[15].

Analyzing the Negotiation Process

The negotiation process in the run up to reaching an agreement is perhaps the most difficult phase. The case of Northern Ireland represented a chronic version of a typical conflict situation. Bringing together two communities for negotiations historically rooted in an environment of hostility, distrust and violence is not an envious task for any peacemaker. The decisive factor in the negotiation process has been the will to pursue peace. The reluctant role of the various sections of leadership in Northern Ireland is typical of any conflict. Leaders aspiring to represent the cause of a nation do at times end up undermining the very cause of that nation by failing to appreciate the negative impacts of allowing a nation to drift into a state of perpetual conflict.

Clem Mccartey in a paper gives an account of the settings against which negotiations took place, "For the people living in Northern Ireland the situation has proved so intractable because of a vivid awareness of past attitudes and behaviour and the fear that these will be replicated in the future. Their concerns about the past and the future in turn govern and limit their present conduct and reconfirm the belief that opponents have learnt nothing from the past: they have not and will not change. It is important to appreciate these perceptions and relationships in order to understand the processes, mechanisms and proposals which were needed to allow the parties to negotiate the Belfast Agreement in April 1998 and to understand the continuing hesitation and opposition to completing this process[16]."

It is difficult to attribute a particular date or event as the start of the negotiation process in the run up to the signing of the Good Friday Agreement. However, some particular events did build up the momentum and the desirable atmospherics, conducive for dialogue and a negotiated settlement. Equally important was the dawning of the realization of the distinction between achievable and desirable on sections of leaderships. Violent incidents did always put pressure on the peacemakers but the determination for peace finally prevailed. The most important factor of the signing of the Good Friday Accord has been the yearning for peace in Northern Ireland and conflict transformation from a violent mode to a political mode.

We recall some of the major events en route to the signing of the Good Friday Agreement, which are an indicator of the arduous maze of negotiations that had to be carried out in pursuit of an Agreement.

The IRA bomb at the Enniskillen Remembrance Sunday on 8 November, 1987 killed eleven persons and injured many more. Enniskillen had the whole British nation in outrage. This was one of the first incidents, where the IRA publicly expressed remorse.

Statements made by Northern Ireland Secretary could be termed as some of the most important indicators of flexibility and possibility of a negotiated settlement.

Northern Ireland Secretary of Peter Brooke who took office in July 1989 and after a hundred days in office made the remarkable acknowledgement that democratic governments, on the Cyprus analogy, sooner or later end up talking to terrorists.

On November3, 1989 Peter Brooke made a statement that IRA cannot be entirely defeated militarily and talks could follow an end to violence.

On November 9, 1990 Peter Brooke made a statement that Britain had no "selfish strategic or economic interest" in Northern Ireland and was prepared to accept a United Ireland by consent.

On 14 March, 1991, the first roundtable talks excluding Sinn Fein started and continued through 1992. Not much was achieved in the talks. However the concept of the three strand relationship that finally took shape in the Good Friday agreement was first discussed in these talks.

Between 1991 and 1993, Sinn Fein published a document setting out its peace strategy. Ulster Unionists agreed for the first time to talk to the Irish Government, the respected leader of the SDLP John Hume held secret talks with Gerry Adams. In November, 1993 secret communication between the British Government and the IRA were revealed, which had probably begun at the time of Peter Brooke's statements. On 15 December, 1993 the British Prime Minister and the Irish Prime Minister made a joint statement accepting the principle of self determination on the basis of consensus of all the people of Ireland. This particular statement represented a turning point in the relationship between the two countries and the conflict in Northern Ireland. The Downing Street Declaration of 15, December, 1993 expressed British government's acceptance of the right to self-determination, subject to concurrent consent, its renunciation of any selfish strategic or economic interest, its commitment 'to encourage, enable and facilitate' the achievement of agreement between the people of Ireland and its promise to accept the admission of Sinn Féin to political dialogue with the other parties, and not just in a nationalist forum. This challenged the whole rationale of continuing the armed struggle.

It took another eight months for the republican movement to be convinced. The IRA announced a complete cessation of violence on 31 August, 1994.

The combined loyalist military command announces a ceasefire on 13 October, 1994.

Gerry Adams' visit to the USA after the intervention of American President Bill Clinton in January 1994 and lifting of the broadcasting ban on 16 September, 1994 were measured confidence building measures.

On March 7, 1995, Northern Ireland Secretary Patrick Mayhew revealed a three point plan to remove IRA weapons ahead of talks. The basic purpose was to convey that talks could only move after the IRA had decommissioned its weapons.

On May 10, 1995 the first official meeting in twenty three years took place between Sinn Fein and a government minister.

On November 30, 1995, US President Bill Clinton made his first visit to Northern Ireland to bolster the peace process.

Political links with the Sinn Fein were cut after the February, 1996 London Dockland bombing by the IRA.

In February, 1996, the Mitchell report set out proposals to tackle decommissioning and dialogue. It recommended disarmament along side dialogue and wanted confidence building measures by the government to facilitate such a concurrent process.

Elections for representatives to possible peace talks were held on May 30,1996. Sinn Fein received more than fifteen percent of the vote, but continued to remain excluded from the talks.

IRA announced a renewal of its ceasefire offer on July 20, 1997 after government resumed contact with the Sinn Fein.

In September, 1997, Unionists including DUP boycotted talks in reaction to the admittance of the Sinn Fein in the dialogue process.

Sinn Fein president, Gerry Adams met British Prime Minister, Tony Blair for the first time on October 13, 1997.

The role of US senator George Mitchell was crucial and became an honest trusted broker between the unionists and the Republicans.

Prime Minister announced the Bloody Sunday Inquiry on January 29, 1998, in which civilian protestors had died in Londonerry, in January 1972.

The Good Friday Agreement is signed on April 19, 1998.

During this period the big incident of violence by the IRA was carried out on 23 October 1993. Ten people were killed by an IRA bomb planted at a fish shop, on the loyalist Shankill Road.

On 18 June, 1994 loyalist gunmen killed six catholic men in a bar at Louhglinisland County Down.

On February 9, 1996 the IRA exploded bomb in Dockland London, killing two people.

IRA bombed the Manchester City Centre on 15 June, 1996, destroying a large part of the city centre.

British soldier killed by the IRA in Northern Ireland on 12 February, 1997.

IRA caused chaos across England with hoax bomb calls, in April, 1997.

We have attempted to trace the major events from 1987 till the signing of the agreement. The major incidents of violence have purposely been listed separately. Persistence of violence does make the job of the peacemaker even more difficult. The relentless determination shown by the Irish and the British leadership in pursuing peace despite the odds has perhaps been the most decisive factor in reaching an agreement. No doubt even the British government too delayed the process by trying to get the IRA decommission arms, before including the Sinn Fein into the dialogue process. Ceasefire and decommissioning of the IRA weaponry were an issue and have continued to haunt the peace process even in the implementation stage. The peace accord is an example of the ups and downs in terms of securing a ceasefire or decommissioning, in pursuit of an agreement. More important, should ceasefire and decommissioning be a pre-condition for talks or should they be conducted in parallel phases. The Good Friday accord witnessed the breaking down of conditional ceasefire, resumption of ceasefire, objections by other parties, insistence on explicit renunciation of violence and yet it succeeded in overcoming what were seen as intractable hurdles to achievement of peace. In the eventual analysis, the will and perseverance shown by the British and the Irish governments in pursuing a seemingly elusive agenda of peace has been a crucial factor.

The process went beyond traditional elites and instead focussed on inclusiveness. The decision to let democracy decide the participants in the negotiations process ensured that the negotiations were rooted in inclusion. Forum elections were held to determine the political parties who would be a part of the negotiating process in Northern Ireland. The electoral system drawn up for the forum elections allowed increased representation for smaller parties. This was perhaps an attempt to make talks as inclusive as possible.

There was a realization by the IRA of the distinction between the concept of physical capacity to carry on the conflict and the concept moral and psychological

capacity of sustaining an armed struggle with no obvious or visible objectives in sight. Similarly there was a reciprocal realisation in the British Government of the distinction between the concept of being able to contain the IRA and the concept of not being able to achieve a decisive military victory. One of the important facets of the peace process was the pattern of the agreement- arrived through negotiations, endorsed by a popular referendum and backed by the international community

Analyzing the Model

The declaration of support tackles the sensitive issue of sacrifices rendered by the adherents of different schools of political ideology in Northern Ireland. The second Para of the declaration of support states, "The tragedies of the past have left a deep and profoundly regrettable legacy of suffering. We must never forget those who have died or been injured, and their families. But we can best honour them through a fresh start, in which we firmly dedicate ourselves to the achievement of reconciliation, tolerance, and mutual trust, and to the protection and vindication of the human rights of all."

These are mere words and do not have a direct impact on the agreement. However they have a special contextual importance and flavour the agreement with concepts of remorse and reconciliation. The declaration of support further elaborates the concepts of equality, mutual respect, peaceful means of conflict resolution and acknowledgement of conflicting aspirations and attempts to accommodate the conflicting aspirations.

The section on constitutional issues is important as it resulted in constitutional and legislative changes in the Irish and British constitution. The Government of Ireland Act, claiming British jurisdiction over Northern Ireland would be repealed, while Irish Constitution would be amended, withdrawing the Republic's territorial claim on Northern Ireland and offering formal recognition that Northern Ireland is legitimately a part of the UK. The future of Northern Ireland was subject to the wishes of the people of Ireland and Northern Ireland.

The elements of evasiveness present in the constitutional issues have evolved into the concept of protective ambiguity. Up to a certain extent, ambiguity does seem to be an imperative in any conflict resolution process. Some proportion of ambiguity is essential to facilitate the reconciliation process after decades of violence and hostility. However the arduous delay and wrangling in the implementation stages did attract criticism of the protective ambiguity having gone too far.

There is a contradiction in defining majority in the event of exercising of right to self-determination. Does it mean people of Northern Ireland, people of Northern Ireland and people of the Irish Republic together, or two sets of concurrent tests of majority in Northern Ireland and the Irish Republic? Perhaps it is a way of conveying the unpalatable. The language adopted is vague and could be subject to multiple interpretations. The irresolvable issue of definition of majority has been replaced by an irresolvable riddle. And probably the riddle is preferable at least for the time being.

The territory constituting Northern Ireland continues to remain in its entirety part of the United Kingdom. However the inhabitants of the territory have the right to acquire dual citizenship, identify themselves as Irish or British or both. While dispute over the final settlement of the land (Northern Ireland) is still on, there is an attempt to allow the people inhabiting the land exercise issues pertaining to identity, culture, language in accordance with their wishes. There is room for ethnic and cultural identification of sections of the society who adhere to the ideology of merger with Irish Republic.

The constitutional issues once again reinforce the concept of conflicting aspirations and the variance in the sentiment and the vague language is perhaps an indication of accommodation within the current territorial dynamics being the only way out.

The Agreement is further divided into three strands.

Strand one deals with the institutional establishment in Northern Ireland in the form of a devolved Assembly. The Assembly is the executive and legislative authority. The distinct feature of this Assembly is the cross community support rather than typical majority. There are safeguards to ensure that the Assembly operates on a consensual route across the ethnic divide. Three rules have been designed to facilitate this. They are Parallel consent, Weighted Majority and Petition of Concern. The Legislation suggests that the Parallel Consent procedure should be attempted first. Under the Agreement all legislation and key decisions taken must be checked to ensure that they infringe neither the European Convention on Human Rights nor any future Northern Ireland Bill of Rights. Strand one is an instrument of devolution and power sharing across the sectarian divide.

Under Strand Two of the Good Friday Agreement, provision was made for a North-South Ministerial Council (NSMC) to be set up under a new British-Irish Agreement. This Council, or the "Irish dimension", was the institution that persuaded

the nationalist/republican community to support the Agreement. The NSMC brings together those with executive responsibilities in Belfast and Dublin "to develop consultation, co-operation and action within the island of Ireland" on matters of mutual interest. Each delegation in the Council is accountable to the Assembly and the Dublin parliament or Oireachtas respectively and ministers will require the approval of their parliaments for decisions that go beyond their "defined authority". The Agreement stipulates that the North-South Council and the Assembly are "mutually interdependent" and "one cannot successfully function without the other". There was also agreement on six other areas for co-operation that include aspects of transport, agriculture, education, health, the environment and in the case of tourism, a joint North-South public company is to be established.

The British-Irish Council (BIC), also known as the Council of the Isles, is dealt with in Strand Three of the Good Friday Agreement. It emerged as a late entry and was put forward at the request of the unionists to balance the North-South Ministerial Council which the nationalists and republicans wanted. The BIC is 'loosely' based on the model of the Nordic Council that was established in 1952 and includes Denmark, Finland, Iceland, Norway and Sweden together with three autonomous areas, Faeroes and Greenland under the jurisdiction of Denmark and the Aaland Islands which are part of Finland.

The Agreement mandates the BIC to "promote the harmonious and mutually beneficial development of the totality of relationships among the people of these islands", and to exchange information, discuss, consult and use best endeavours to reach agreement on co-operation on matters of mutual interest within the competence of the relevant administrations".

The BIC includes representatives of the British and Irish governments, devolved institutions in Northern Ireland, Scotland and Wales, and representatives of the Isle of Man and the Channel Islands, which includes Jersey and Guernsey.

There is a high degree of correlation between the variance in the sentiment and the new institutions. The creation of institutions across Irish Republic, Northern Ireland and United Kingdom and their interdependence ensures that all shades of the sentiment are reflected in the Agreement. Creation of new institutions with a level of interdependence spread between two sovereign states of the United Kingdom and the Irish Republic is an exhibition of acceptance of realities. This is in essence an attempt to balance the levels of sentiment for merger with the Irish Republic with

proportionate levels of control over affairs of Northern Ireland by the Irish Republic without prejudice to the interests of the United Kingdom.

The section on decommissioning of paramilitary weapons - which has proved to be the most contentious - requires the participants "to use any influence they may have" to achieve decommissioning of all arms "within two years following endorsement in referendums North and South of the agreement and in the context of the implementation of the overall settlement". On the demilitarization front the British government's stance is summed up by- is committed to "as early a return as possible to normal security arrangements in Northern Ireland" - subject to the level of threat.

Policing is another controversial area covered in the Agreement, which set up the independent Patten Commission to look at the issue, as well as a parallel commission looking into criminal justice in Northern Ireland.

Equally controversial was the provision in the Agreement for the early release of paramilitary prisoners, as long as the organisations to which they were linked were maintaining a "complete and unequivocal" ceasefire.

A copy of the agreement was sent to every house in Ireland and was ratified in a joint referendum on 22 May, 1998, with a 72.12% in Northern Ireland and 94.4% in the Irish Republic, creating an all-Ireland majority of 85.4% in favour.

Implementation Process- Post Solution Scenario

The implementation of the Good Friday Agreement has been marred by disagreements leading to the suspension of the devolved Assembly. The Assembly continues to be in a state of suspension and Prime Minister Tony Blair has set a deadline of November 24, 2006, to set up a power sharing committee. Not surprisingly, progress on other issues has been slow as well. It is important to assert at the outset that while the delay is by no means a desirable prospect, the Good Friday agreement still stands out as a successful model. The most visible aspect perhaps being that mode of resolving disagreements have been transformed from violent conflicts to political battles. The peace process is likely to move out of the period of turbulence.

The concept of protective ambiguity which helped secure an agreement did to a certain extent facilitate the impeding of the implementation process. The liberty of multiple interpretations has been a frequent cause of stalling the process. The

recurring theme in the stalled peace process has been issue of decommissioning, policing reforms, demilitarization and stability of the political institutions. These concepts have in effect become the source of all the disagreements that might have emerged in different forms. The date of May, 2000 for disarming all paramilitary groups could not be achieved. Delay meant delay in the establishment of the Assembly and the Executive, because of Sinn Fein and its relations to the IRA.

The Assembly and the Executive were eventually established in December 1999, on the condition that decommissioning would begin immediately, but were suspended within two months due to lack of any progress on the decommissioning front, before being re-established in May 2000. The assembly was again suspended in October 2002. The entire deal was on the verge of a collapse in October 2002. There were allegations of a Republican spying ring at the Stormont. The police raided Sinn Fein's offices and as a result the biggest Unionist party refused to sit with the Sinn Fein, describing them as indistinguishable from the IRA. The Assembly was suspended and Northern Ireland was once again under direct rule from London.

Amid the disagreements and suspension of the Assembly, some progress was made on the decommissioning front. On 6 May, 2000, IRA announced that it was opening some arms dumps to inspection. On 26 June, 2000, Weapon inspectors confirmed that they had inspected some IRA dumps and concluded arms could not be removed without detection. On 23 October, 2001, IRA announced first act of decommissioning witnessed by the arms chief, triggering a return to power sharing. On 8 April, 2002, IRA announced that second tranche of arms had been put beyond use. The distrust and suspicions remained.

In April 2003 London and Dublin proposed a blue print on the way forward to restore devolution, but postponed the publication. On May 1, 2003, Prime Minister Tony Blair postponed the Assembly elections. He accused the IRA of refusing to completely rule out paramilitary behaviour. In September, 2003, Independent Monitoring Commission charged with scrutinising paramilitary ceasefires began work. By October 2003, indications of willingness on all sides on power sharing seemed to emerge. On October 21, 2003 IRA completed third act of decommissioning. The Unionists rejected as not being sufficiently open. This again put off plans of power sharing. Elections to the Assembly were held on 26 November, 2003. Contrary to the expectations of a breakthrough, post poll the parties seem to have hardened their stances. The elections saw the extremist versions of the Nationalists and the Unionists emerge as the biggest parties. The Sinn Fein and the DUP emerged as the biggest parties. Loyalists DUP continued harping on the theme of

decommissioning and the year 2003 ended without any progress. In March 2004, first substantial talks were held after elections but ended without any breakthrough. In September, 2004 intensive talks were held at Leeds Castle. Gerry Adams reportedly offered to allow two clergymen, one protestant and one catholic to witness the decommissioning process. The unionists were intent on a visual proof. On 8 December, 2004 Prime Minster Tony Blair and Irish Prime Minster Bertie Ahern said they had a package for final political settlement. However Sinn Fein rightly conveyed that photographing of the decommissioning process was unacceptable as it was tantamount to humiliation. On 18 March, 2005 Northern Ireland Secretary asserted that no talks would be possible until the IRA issue was settled. On 28 July, 2005 the IRA made a historical statement saying it had ordered an end to armed campaign. On 1 August, 2005 the British Government set out a two year plan to scale down the Army's presence in Northern Ireland. Two months later on 26 September, 2005 the head of the independent decommissioning body General John De Chastelain announced that his organisation was satisfied that all the IRA arms were beyond use. While the British Government felt it would be a major step towards devolution, the Unionists continued to remain sceptical. On 6 April, 2006 Prime Minister Tony Blair and Bertie Ahern travelled to Northern Ireland to unveil their blueprint for restoring devolution and the Northern Ireland Assembly was given time until 24 November, 2006 to set up a power sharing executive. Northern Ireland Secretary Peter Hain has launched a "Virtual Assembly". The Assembly can meet and debate- but not pass legislation, in the hope that this will lead to sufficient trust between the parties for an executive eventually to be nominated and takeover back from London. The final deadline is 24 November 2006.

The implementation process finally saw decommissioning, a two year time table for demilitarization, attempt at policing reforms and a deadline to set up power sharing executive by November, 2006. Yet the whole implementation process has been in the news for disagreements rather than agreements. Both the process of negotiations and the implementation point to the problems created by sections of leadership by going too far in order to get identified with the sentiment. The hard-line positions adhered to, by various sections of leadership finally made them prisoners of their own rhetoric and eroded their capabilities in exhibition of a realistic behaviour. The cross party executive system of power sharing too seems to have, on the negative side, further intensified the ethnic divisions.

"Perhaps the biggest achievement of the peace process is that there are few people who would welcome a return to violence. Many paramilitary leaders said that they did

not want the violence to continue into the next generation. Violence has continued, which is perhaps not surprising given that a culture of violence had become pervasive during the previous thirty years. Ironically street violence has increased and there has been much more overt tension at the interfaces between opposing communities, as though they were testing who had won and who had lost. Though somewhat abated, violence within communities has continued in the form of punishment beatings and shootings, mainly for anti-social activities. Some sections of paramilitary groups have themselves been involved in drug dealing and other anti-social activities as they find new openings for their skills. There have been two bitter feuds within loyalist paramilitary groups. Northern Ireland is in a post-settlement phase but the experience of the last five years demonstrates clearly that this is not the same thing as a post-conflict phase. Although the violence has diminished, the conflict has not and the situation has been characterized by argument and stand-off. It is not a collaborative period but one where each side is struggling for advantage to maximize its gains from the Agreement in whatever way it can. This in fact was the intention of the Good Friday Agreement: that the conflict over equality and constitutional aspirations would be transferred from the streets into the debating chamber where it might be sorted out by constitutional if not cooperative means[17]."

Analyzing the agreement eight years down the line, it would still go down in history as a successful model of conflict resolution. The implementation process has been much more difficult than was initially anticipated. There is some scepticism about the ability of the Sinn Fein and the DUP in forming a power sharing executive and sustaining it. The year 2006 is very important for the peace process and in case the political institutions are not re-established, they are likely to be dissolved. There could be some revision in the agreement. Apart from some inherent flaws like deepening of the sectarian divide and further polarization partly due to the cross community treatment of the agreement, the main impediments have been created due to a loss of trust between the conflicting parties. Decommissioning and demilitarization has perhaps been the main impeding factor, so have police reforms. The street violence, Columbia incident break in at Castlereagh police station in Belfast and the spying incident at the Northern Ireland office all facilitated the loss of trust between the conflicting parties.

The renunciation of armed struggle by the IRA is by no means a small achievement. By October 2006, the International Monitoring Commission is expected to determine the levels of compliance by the IRA with its new commitments. A positive report is further going to bolster the peace process. The most outstanding

feature of the agreement has been its ability to transform the rights battle from a violent struggle to a political struggle. Irrespective of the pace of the peace process, it is very unlikely that violence would return to Northern Ireland. Good Friday Agreement signals a victory for proponents of dialogue and negotiations over proponents of violence.

"Good Friday Agreement"-Insights into J & K Conflict

Good Friday Agreement can be held up as an example of good practice, in conflict resolution. The remarkable feature in this agreement which could be emulated in the J&K conflict is the difference that leadership can make in conflict resolution. The will, grit, determination and at the end sheer perseverance shown especially by the British and the Irish leadership finally paved the way for an Agreement to be signed. The ubiquitous role of leadership in the implementation process is evident. The message for the leadership on the J & K conflict is that leadership is an imperative variable in conflict resolution process.

The Good Friday Agreement accepts the variance in sentiment in Northern Ireland and tries to reflect the variance in sentiment. This can be replicated in J&K by realistically evaluating the variance in the sentiment and coming up with a model which proportionately reflects the variance in the sentiment.

The mode of reflecting the variance in the sentiment in the "Good Friday Agreement" is through the establishment of interdependent institutions across Northern Ireland, Irish Republic and the United Kingdom. Three-strand treatment of the Agreement has meant the creation of institutions- Devolved Assembly in Northern Ireland, North–South Ministerial Council and British Irish Council. India and Pakistan could emulate the practice and the outcome could mean five strands i.e. India-J& K S, Pakistan-J & K M, J & K S-J&KM, India-J & K M, Pakistan-J & K S.

The concept of inclusiveness in the negotiation process could be replicated in J&K. The pattern followed in Northern Ireland- Inclusiveness was decided by an electoral forum, and the Agreement was finally endorsed by the people in Northern Ireland and the Irish republic. There are lessons to be learnt. India and Pakistan could try to desist from developing leaders in J & K designed to suit their interests and instead allow a process of democratic identification designed to suit peace and resolution.

Consent has been redefined and we have a concept of "conflict specific consent". There is a distinction between the concept of consent and unanimity. Consent is woven into every strand and every stage of the process. The concept of consent in the negotiations, the concept of consent in the Agreement and the adherence to consent in the implementation stage are worth emulating. Indo Pak peace process would have to transform from the current prescriptive mode into the consent mode.

The Agreement is devoid of any pretensions and blame game. It tackles the sensitive issue of sacrifices, sufferings and pain. The treatment given to the model provides ample scope for the states of India and Pakistan to try and empathize with the sufferings encountered by the people of J & K. The model has shown due reverence to people who have sacrificed their lives. It also tries to reach out to the victims of violence. The impact of mere words is something that needs to be urgently comprehended by the state of India and Pakistan.

There are lessons for the leadership of J & K. The various sections of leadership of Northern Ireland were prisoners of their own rhetoric. Decades of rabblerousing in an attempt to get closely identified with the sentiment put them in a position where they had little role in moulding the sentiment into an achievable form. Most of the delay was due to the uncompromising attitude of the sections of leadership in Northern Ireland. And this meant more pain for the people of Northern Ireland. The end result was more or less the same. So who benefited from the delay? This is a question which the people of J & K could pose to their leaders.

Martin Mansergh, in his paper, notes: "In autumn 1993, after a period of waiting, John Hume and Gerry Adams made public the fact that they had put a proposal to the Irish government for transmission to the British. Unionist and loyalist fears were greatly heightened and violence increased as it often did when there were signs of political progress[18]". Another statement which became the clarion call of Albert Reynolds- "Who is afraid of peace?" The concept of correlation between heightened violence and political process and the concept of vested groups afraid of peace could be an indicator of the economic agendas of conflict. A similar pattern exists in J & K. Political progress has as a rule been associated with heightened levels of violence and increase in human rights violations. It is essential to focus on the elements who have benefited from the conflict and would be averse to resolution process. Perhaps there is a pressing need to make- "who is afraid of peace", a clarion call in J & K conflict.

An important aspect of the resolution process in Northern Ireland was the yearning for peace among the people of Northern Ireland. Inevitability of dialogue and

negotiations for the resolution had dawned on all the actors in the dispute and on the people of Northern Ireland. Similar concept of inevitability of dialogue and negotiations is quite evident in J & K. Somehow this sense of inevitability has not translated into desired internal pressures on the leadership about the urgency of dialogue and negotiations. It is partly because of the scant reverence that has been shown towards the people of J & K in the resolution process.

There is an attempt by the states of India and Pakistan to seek a solution in isolation of the people of J & K. This format is unlikely going to succeed. The people of J & K have a much bigger role in the resolution process and India and Pakistan could draw inspiration from the Northern Ireland peace process in terms of importance of the people of the disputed territory in resolving the conflict. The approach of viewing the J & K dispute as a joint problem needing a joint solution needs to be institutionalized.

The statements of Secretary of State for Northern Ireland Peter Broke or the Downing Street declaration were all unmistakable indications of a change in policy and tilt towards realistic flexibility and urge for resolution. In case of India similar statements have come from different Prime Ministers during different periods and yet no headway has been made. The current Prime Minister too has made similar statement indicating a flexible approach. The common wisdom in J & K is that these statements are as sincere as the statements of the previous Prime Ministers. The Indian state has built up momentums of peace and resolution too often and then failed to deliver. This is linked to the concept of politics of expectations. It would be better to resist issuing statements of statesmanship if they are not to be followed by action. They end up impeding possible acts of statesmanship of the future.

Martin Mansgerh, in a paper, notes: "But it took the catalyst of the Enniskillen Remembrance Day massacre of 8 November 1987 to start the dialogue that marked the beginning of the peace process. After Enniskillen, many people felt that the time might be ripe for dialogue to bring violence to an end. First of all, there was a moral duty to try and prevent any more Enniskillens, and secondly there was a sense that the futility of a continuing campaign of violence was becoming obvious to all[19]." The reaction to Enniskillen was to expedite search for peace. In the Indo Pak scheme of things, the reaction to a violent event is to call off the peace process. Invariably the peace process is started again only after delaying it and only after more lives are lost.

The total number of fatalities in Northern Ireland from 1969-1994 stood at 3174. This was a number considered too high and saw an expedited peace process. It meant

a show of flexibility by all the parties to the dispute and sacrificing of what were hitherto national interests or patriotic interests and involved painful compromises. The number of fatalities in J & K is fast approaching a six digit figure. Yet the levels of fatalities do not seem to be high enough to stimulate an expedited peace process. Ironically the pace of the peace process and the desired attitudinal shift is perhaps the slowest among the different sections of leadership in J & K.

In 1985, unable to secure a political settlement between Catholics and Protestants, the British government reached an agreement with the Republic of Ireland. The Anglo-Irish Agreement gave the Irish government a consultative role in Northern Ireland's affairs. Although this fell short of joint authority, the agreement institutionalised and made permanent the cooperation between the two governments on the "management" of the conflict, therefore being an important precursor to the post -1994 peace process[20]. The unionists were against the Anglo-Irish Agreement, who objected to the role given to the Irish government in the domestic affairs of Northern Ireland. The IRA also perceived the cooperation between the Irish and the British government as a threat. Anglo Irish Agreement did provide a stimulus for the creation of a new basis on which peace accord could be built. The message for the states of India and Pakistan is that peace accords need to be inclusive and that two states cannot script a successful peace accord in isolation. Further the lack of investment in the Anglo Irish Agreement had to be finally compensated in the "Good Friday Agreement". There is need to evaluate the optimal level of investment- i.e. level of political investment needed to secure resolution rather than treating political investment as derivative of bargaining capacity.

Demilitarization and decommissioning were not dealt in detail and they posed the most of the problems in the negotiation and implementation process. The process of implementation got bogged down and was on the verge of failure. India, Pakistan and the armed groups would have to understand that both the concepts are concurrent. Demands for demilitarization would mean demands for decommissioning. And for a peace process to move on, both will eventually have to take place. In Northern Ireland the peace process got delayed at the negotiation stage, implementation stage around demands of decommissioning and demilitarization. In the end both decommissioning and demilitarization started to take place. However delay meant, more lives lost, more pain, more suffering. The same is likely to happen in J & K, given the current status of politicization of demands for demilitarization. Demilitarization is a military concept and it is in the interests of the peace process to let it remain a military concept.

Making it a part of an overt political strategy or as bargaining tool is only going to delay the process.

Northern Ireland Secretary, Peter Hain put forward the concept of "enabling environment". In a statement on eve of the British announcement of a timetable for demilitarization he said, "Provided the enabling environment is established and maintained this programme (demilitarization) is achievable within two years". The concept of "enabling environment" needs to be comprehended in a much wider sense. Enabling environment for demilitarization or decommissioning is a joint responsibility of all the parties and neither demilitarization nor decommissioning can be implemented in the absence of an "enabling environment".

A distinction has to be made between negotiations and humiliation. In 2004, the implementation process had been stalled first over decommissioning issue and then over the witnessing of the decommissioning process. The Unionists wanted photographic evidence of the decommissioning process. Gerry Adams conveyed to the British Prime Minister that photographing the decommissioning process is tantamount to humiliation and rightly refused. Both India and Pakistan would have to take care that they do not end up humiliating intentionally or unintentionally either the armed groups or other sections of political thought in J & K.

Monica Mcwilliams and Kate Fearson in their paper spell out the concept of protective ambiguity which provides some freedom of interpretation necessary for it to be sold to the opposing constituencies. There was perhaps an overdose of protective ambiguity in the Agreement. But it is something worth emulating in moderate doses, and perhaps avoiding an overdose.

Some of the concepts of consent and cross community representation used in the Northern Ireland peace process are given below. They could be emulated in J & K conflict.

Parity of Esteem

The term is usually used in relation to equality issues: 'The principle of political, social and cultural equality of treatment before the law and attitudes of valuing and respecting those with different beliefs, lifestyles and backgrounds.

Parallel Consent

A safeguard for minorities ensuring that they cannot be outvoted by the majority in a context where majoritarianism might normally apply as in parliamentary institutions. Strand One of the Belfast Agreement provides that key decisions will require 'a majority of those members present and voting, including a majority of the unionist and nationalist designations present and voting'.

Proximity Talks

Procedures to allow parties to participate in negotiations or talks when they are not willing to meet face to face. They tend to be in separate rooms in the same or adjacent buildings and intermediaries move between them.

Sufficient Consensus

This is a procedural means to prevent one party blocking progress in negotiations where there is a general consensus. The term was coined in the constitutional negotiations in South Africa. A proposition was deemed to have sufficient consensus if a majority of representatives of each tradition or faction support it even though one or more parties do not.

Concurrent Consent

This concept was used in the Downing Street declaration and meant concurrent consent in Northern Ireland and United Ireland. The concept of concurrent consent could be utilized in J & K.

The scope for emulation of the Northern Ireland model is gaining academic acceptability in India. A G Noorani in an article in Frontline writes, "Therein lies its relevance to Kashmir. India must reckon with popular alienation in the State as well as with Pakistan's legitimate interests as party to the dispute, even while ruling out a plebiscite. Pakistan has been an interlocutor since 1947. But Kashmiris have become more assertive since 1989 in their claim to be a party in their own right.

A format for the dialogue will have to be devised and all the three stands put in place - power sharing in all the regions of Kashmir; India-Pakistan accord; and, in such a context, links between both parts of the State.

What is necessary, above all, is a leadership in India and Pakistan which is durable, creative and competent to forge national consensus for a compromise acceptable to the people in both countries and to the people of Kashmir[21]".

Sidharath Vardharajan in an article in "The Hindu" points out in the context of the J & K conflict, "There is also the Anglo-Irish agreement, which established structures for consultation between Britain and Ireland in their effort to resolve Northern Ireland's status and enshrines key principles like that of majority consent and non-violence. Pan-Ireland institutions dealing with transportation, tourism and fisheries were conceived of as vehicles for integration on the ground, even if thorny political issues take time settling[22]."

Federal Solution- Insights into the J & K Conflict

The federal solutions provide a range of arrangements that entities and sub entities have entered into. The ranges of solutions give an indication of the vast diversity of arrangements of coexistence. They balance ethnic claims, linguistic claims, and territorial claims in pursuit of achievable equilibrium as opposed to ideal equilibrium. None of these solutions could be replicated or adapted as a whole. They could inspire to federate. The main inputs for a model specific to J&K would have to be based on the local factors. Factors like size of population, history of conflict, fatalities in the conflict, literacy rate, levels of economic prosperity, scope for international mediation or intervention etc. are all important factors in deciding the eventual model. A model would have to basically evolve in J & K; the external inputs could provide the inspiration for the model to evolve.

These models do, however, depict the inadequacy of the exclusive sovereignty model and highlight the need to institutionalize the evolving concepts of sovereignty rather than the traditional concept of sovereignty- obsessed with political sovereignty and presumed to be indivisible and as a whole concept rather than a part concept.

The traditional textbook arrangements rarely exist as exclusive concepts. Many polities are combinations of more than one arrangement, sometimes in overlapping ways and sometimes in a variety of options offered within the polity as a whole.

Siddarath Vardarajhan examines a range of such federal solutions in an article, in "The Hindu" and concludes that, "By themselves, none of these examples offers a complete set of principles for the resolution of the Kashmir dispute but many individual elements are attractive. South Tyrol suggests the notion of cross-border provincial ties between Ladakh and the Northern Areas, Jammu and West Punjab, and Uri, the Valley and Muzaffarabad - all anchored in cast-iron constitutional guarantees

of autonomy and ethno-linguistic representation. The Aland Islands suggest the virtue of demilitarisation, and Ireland the principle of democratic consent. The Sami plan suggests the idea of a pan-J&K parliamentary assembly, linked to separate assemblies within Indian and Pakistani sovereignties, but with broad powers to examine matters of transportation, forests, water, perhaps even taxation. Perhaps one way for India to get the ball rolling is to encourage dialogue between the Kashmiris on both sides of the LoC, as an adjunct to the ongoing composite dialogue process[23]."

David Elazar concludes in his paper that given the variety and flexibility of federal principles and arrangements, the scope which federalism offers for the solution of complex problems is indeed great. If there is a will to federate; it is likely that suitable arrangement can be found. Lacking the will, even the great scope which federalism provides will prove to be insufficient[24]. The range of federal solutions and the will to federate could provide some answers to conflicts across the world.

The Hong Kong Model- Insights into J & K Conflict

The Hong Kong model illustrates the limits to which the powers of a government can be stretched, while not enjoying the status of a fully sovereign state and under the sovereignty of another state. Although there are no ambiguities about its sovereignty but in terms of economics it is a fully independent economic entity. And the status of an independent economic entity has a vast spread. Even in foreign affairs which are the sole domain of the Chinese Government, the Hong Kong government has the right to enter into relationships with other states in the interests of its trade and economic policies. It is a separate custom area and has a capitalist system, a free port, an independent judiciary, an independent police force, separate immigration system, power to issue travel permits to its residents, diplomatic presence in the form of consular missions. It is a signatory to a host of international trade agreements and is treated as a separate entity in issuance of textile quotas.

The Hong Model could be an inspiration for the J & K conflict. The existence of a capitalist system, free port Hong Kong in the communist China gives an indication of the range of options that sincere peacemakers have in J & K. The remarkable feature about the Hong Kong model is that it is free from pretensions or polemical confusion. There are no confusing titles of President or Prime Minister, yet the Chief Executive of the Hong Kong government exercises real power and clout.

A Glance at the Indo-Nepal Model

The Indo-Nepal model could provide useful insights into the efficacy of inter state relationships to explore convergences in the rights and privileges of the citizens of two separate sovereign entities. The relationship between India and Nepal is defined by the Indo Nepal Treaty of Peace and Friendship and the Indo Nepal Trade and Transit Treaty.

Nepal serves as a valuable example of how India has been able to manage its security concerns by the optimal utilization of economics. The liberal trade ties between Nepal and India, the economic concessions in trade treaties including duty free access of goods of Nepali origin to the Indian market are not confined to the realm of economic ties. Economics has been used by the Indian state as an instrument to further its security needs. India's economic relationship with Nepal has inherent in it security and political aspects. Convergence on security and political aspects leads to convergence on economic issues. Convergence on conflict resolution in J & K could lead to economic aspects. Whereas a politically stable Nepal is essential for India's security, a politically stable and economically prosperous J & K is essential for peace in the South Asian region as a whole.

Nepal is a landlocked country, located at an altitude varying from 70 m to 8884m, and is bordered by two countries- India and China. India shares a 1752 km open border with Nepal. Indo Nepalese borders are not separated by any natural barriers and there is almost a free movement of peoples and goods between them. As a result, we have two sovereign states entailing two different custom territories with a very permeable border. The 1960 Trade and Transit Treaty between Nepal and India covers a range of issues including the crucial issues of facilities of transit provided to Nepal for trade with third countries and issues pertaining to duty free access, acceptable mode of currency for bilateral trade and trade with third countries. This treaty was further amended and did run into rough weather at times due to the inherent security and political issues. In 1991, a new trade treaty, a new transit treaty, an agreement in controlling unauthorized trade etc. were signed. In 1993, the definition of goods of Nepalese origin was modified and included articles containing not less than fifty percent of Nepalese material and labour. A similar treaty between the J & K Economic Union and India and Pakistan, covering areas of trade, transit, mode of payment, trade with third countries, controlling of unauthorized trade and a range of other issues could be drawn up to regulate the operation of three separate custom territories.

The Indo Nepal Treaty of Peace and Friendship, 1950, defines the relationship between India and Nepal. The treaty has clauses addressing both the security and economic issues. The economic clauses in the treaty refer to the national treatment which will be given to each others nationals regarding participation in industrial and economic development, residence, ownership of property etc. As a result of this treaty, the people of Nepal are free to take up employment, buy property, and even be part of government services in India except in the limited seats of Indian administrative services and its various branches. This particular clause of national treatment literally blurs the distinction in the citizenship rights of Indian and Nepalese nationals.

The Indo Nepal model can be emulated to evolve new relationships between India and Pakistan and the parts of J & K not under their respective territorial controls. The effect would render citizenship virtually irrelevant in practice by allowing residents of J & K S to practically enjoy the same rights as those of Pakistani citizens and residents of J & K M to enjoy the same rights as Indian citizens.

Conclusion

A blend of the Hong Kong Model in terms of independence and powers of the government of Hong Kong, the mode of negotiations rooted in consent and inclusiveness in the Good Friday agreement, the evolution of an irreversible, interdependent relationship between The British, The Irish Republic and The Northern Ireland in The Good Friday Agreement and the example of the Indo Nepal Model could provide an inspiring and stimulating settings for resolution and peace in J & K.

The federal arrangements - indicating creative arrangements of civilized coexistence across the world - are in essence attempts to reconcile the conflicting aspirations-- balancing right to self determination with attempts by states to maintain territorial integrity and a range of other forms of ethnic, linguistic, political conflicts. The remarkable feature of all these arrangements is the process of accommodation without changing the territorial dynamics.

The Aland Islands was granted an autonomous, demilitarized status. Sweden was involved by supplementing the agreement between Finland and Sweden on how guarantees were to be realized. South Tyrol dispute was resolved after decades of unsuccessful attempts and violence, in 1992. Today South Tyrol enjoys a high degree of autonomy and interacts with the sovereign Austrian regions of North and East

Tyrol on a continuous basis. Andorra's defence is jointly looked after by Spain and France. There are many more examples of creative ways of resolving conflicts and having a system of relationship in terms of power sharing which is different and designed to meet the local demands of the conflict.

Apart from the various models that we analyzed in this chapter, we sifted through a host of other peace processes and Agreements. The academic literature that emerges is unanimous on many facets of the conflict resolution process. The areas of unanimity are the academically institutionalized imperatives essential in the success of a peace process. Involvement of armed groups, an all inclusive process, multi party format, the need for going beyond elites and engaging the public, respect for human rights, rehabilitation of victims of violence, reverence for sacrifices, demilitarization, decommissioning-demobilisation-reintegration, truth commissions, importance of process of implementation of an agreement, international intervention or facilitation, existence of conflict economics, conflict incentives, exhibition of statesmanship qualities by the leadership, sacrificing of national interests in exchange for peace, the role of civil society and the redefined contours of sovereignty are some of the areas which could provide a deeper insight into the successful resolution of disputes.

Involving non-state armed groups in resolution process has significant levels of empirical support. Non-state armed groups have taken part in peace processes across the world resulting in the successful establishment of peace. There have been instances of failure but there is growing academic acceptability that engaging the non state armed groups is an imperative in a peace process. Peace accords signed in places around the world torn apart by conflict have included armed groups.

The PLO originally an armed group transformed into a political group and entered into negotiations with Israel. The ANC initially an armed group transformed into a political group and had a key role in the historical transformation to majority rule in South Africa. The armed groups in Northern Ireland were represented in the negotiation process. The URNG in Guatemala finally negotiated with the government of Guatemala. Armed groups MPA and FIAA concluded a settlement in the form of Tamanrasset Agreement with the government in Mali. This agreement failed and was followed by a new agreement with MFUA, which was a united platform. Government of Indonesia and the Free Aceh movement entered into a peace agreement. It failed and failed and the parties retried again and again. Armed groups were a part of the Lincoln peace agreement in Bougainville (Papua New Guinea). Government of India is currently in the process of conducting dialogue with the Naga rebels. Hamas has participated in the elections in Palestine. The LTTE at a certain stage entered into

negotiations with the Sri Lankan government. The Maoists in Nepal are in the process of holding talks with the Government in Nepal. Not all of these interactions have succeeded and might have failed even after signing an agreement. But the dynamics of the conflict resolution has brought them back to the negotiating table.

Non-state armed groups have invariably been involved in the process of negotiations in most of the conflicts across the world. The process of transformation from armed struggle to political negotiations have been analyzed by various think tanks around the globe and the literature on involvement of armed groups suggests key insight and understanding the dynamics of the non state armed movements. These analyses have been based on the case studies of places where non state armed groups have been engaged.

Conciliation Resources' "Accord" has undertaken extensive research and analysis of engagement of non-state armed groups in peace processes. The key finding of their research suggests:

It is vital to achieve greater commitment from all stakeholders to dialogue with armed groups in order to end violent conflict and strengthen democracy.

Engagement tends to strengthen the pro-dialogue elements within armed groups, while lack of engagement tends to strengthen hardliners. Minimal levels of engagement ought to be the norm, not a concession.

Engagement can take many forms, from simple contact to substantive negotiations, involving a myriad of possible third parties. Practitioners and policy-makers should focus on identifying appropriate tactics and effective strategies.

Proscription of armed groups (e.g. terrorist listing) is a blunt instrument and can be counterproductive. There is an urgent need to review such laws and to develop more sophisticated mechanisms to allow appropriate engagement and encourage peacemaking.

Improved interaction and cooperation between governmental and unofficial intermediaries would benefit all parties pursuing effective engagement strategies[25].

Human rights abuses are almost a recurring feature in almost every conflict-zone and are an inevitable by-product of the conflict. States consumed by zeal to maintain territorial integrity often end up violating the human rights of the peoples who contest the territorial integrity of these states. Human rights violations are a common

occurrence even in disputes not aimed at secession and aimed at ethnic or linguistic or political accommodation of rights within the system. Human rights violations end up becoming a bigger part of the problem- bigger than the dispute. Countries sincere about resolving disputes would ensure an immediate end to human rights violations. Continuation of human rights violations makes any peace process unviable as it makes the credentials of the peacemakers suspect.

Truth Commissions have been set up across the world in areas overwhelmed by conflict. Richard Wilson in a paper in Conciliation Resources states that Truth Commissions have become standard post-war structures for publicly addressing unresolved issues arising from past human rights violations. They typically consist of an investigative team with a mandate to take testimonies, corroborate evidence, document human rights abuses and make recommendations regarding structural reforms and reparations. One on hand they are technical, quasi legal institutions which dispassionately document the grim facts of war. On the other, they either challenge or confirm mutilated versions of history.

Truth Commissions allow victims, their relatives and perpetrators to give evidence. In most cases truth commissions are also required by mandate to prevent reoccurrence of such abuses. Truth Commissions exist for a designated period of time, have a specific mandate, and exhibit a variety of organizational analysis of processes and procedures, with a goal of producing and disseminating a final report, including conclusions. The objectives are to produce accounts of past history of abuse and promote national reconciliation. Closely related to the concept of truth commissions are commissions of enquiry into specific events.

Truth Commissions have been established in the Post conflict era in Argentina, Bolivia, Chad, Chile, East Timor, Ecuador, Germany, Ghana, Guatemala, Haiti, Nepal, Philippines, Serbia and Montenegro, Sierra Leone, South Africa, South Uruguay and Zimbabwe. EL Salvador and Guatemala have addressed the post conflict historical clarification through an independent and UN sponsored Truth commission. Commission for Reception, Truth and Reconciliation was set up in East Timor, with the objectives of Truth seeking, community reconciliation. National Commission of Inquiry and Disappearances was set up in Bolivia to investigate disappearances of citizens during 1967-1982. National Commission for Truth and Reconciliation was set up in Chile with a mandate encompassing human rights abuses resulting in death and disappearances during the years September 11, 1973 and March 11, 1990.

Truth Commissions are an imperative to achieve a balance between "vengeance and reconciliation". The establishment of a Truth commission in the post conflict era is essential to restore the social equilibrium of the society. An establishment of a Truth Commission in J & K could go a long way in restoring the societal disequilibrium, explode myths of distorted versions and be an effective instrument in preventing the reoccurrence of such abuses in the future. The objectives need not be political or punishment. A Truth Commission encompassing the objectives of "reconciliation and remorse" could go a long way in repairing the damaged societal fabric.

The scope for emulation based on empirical evidence on conflict resolution is massive. A multi-party format in South Africa, Northern Ireland, resolve of the British and the Irish leadership in Northern Ireland, pragmatism of the Chinese government in Hong Kong, role of civil society in Northern Ireland, South Africa, Guatemala, demilitarization in Aceh, Bougainville, Northern Ireland and host of other places, decommissioning of armed groups in all the places where agreements have been signed, all provide a wealth of information for conflict resolution in J & K. Every dispute has embedded into it local factors which are perhaps far more important. Empirical evidence can give insight into the processes and the structures; the content would have to be formulated in accordance with the local realities.

Learning lessons is not the sole duty of the state of India or Pakistan. The leadership in J & K would have to comprehend the realities of the conflict and not allow lack of statesmanship and vision to translate into prolonged agony for the people of J & K. Clem McCartney in a paper in Conciliation Resources notes that "The more the group has suffered and the greater the sacrifices made, the harder it is to explain why all that effort is now to be put to one side and a new approach adopted. They will also be faced with the problem of the law of diminishing returns: the longer the conflict continues the less impact they have unless they can find some way to escalate the struggle and that may be very difficult to do. So continuing as before in effect leads to a loss of momentum".

There is no dearth of options, should states have the will and the determination to resolve disputes. Ranges of options of accommodation are already in existence and new formats of co existence are emerging, as is the case in Northern Ireland. Successful conflict resolution seems to have very high degree of correlation with leadership variable than with any other variable.

On a concluding note- seemingly most irresolvable disputes have been resolved, while seemingly resolvable disputes stand unresolved. Our perception is that "Nothing

is resolvable and nothing is irresolvable in the world of conflict resolution". The dividing line between conflicts being resolvable and irresolvable is the presence or absence of statesmanship, vision and courage of the leaderships to make the distinction between the "desirable and achievable".

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Chapter 4

Current Scenario

Peace Process

India – Pakistan Engagement

•Phase 1 : Pre Lahore Summit (1997 – 1998) •Phase 2 : Lahore Summit (February 1999) •Phase 3 : Kargil Conflict (May 1999 – July 1999) •Phase 4 : Pre Agra Summit (1999 – mid 2001) •Phase 5 : Agra Summit (14 – 16 July, 2001) •Phase 6 : Parliament Attack and the Military Build up (2001 – 2002) •Phase 7 : Pre SAARC Summit (late 2002 – late 2003) •Phase 8 : SAARC Summit (January 2004 – August 2006) •Phase 9 : Mumbai Blasts (July 11, 2006) •Phase 10 : Post Mumbai Blasts – Havana Declaration

Current Indian and Pakistani Stands

•Current Pakistani Stand •Current Indian Stand

Engagement of the Leadership of J & K

Levels of Violence

Levels of Human Rights Violations

Displaced Persons

Current Political Landscape

Conclusion

•The World of CBMs •Expectations •Impeding a National Consensus – Hate Campaign, Vicious Propaganda •Reaction to Violence •Bilateralism •American Intervention • External Stimulation Versus Internal Stimulation

CURRENT SCENARIO

In this chapter we look at the current scenario and try to trace the progress of the resolution process. There are periods of "cooling and heating up" in peace processes. But the J & K conflict and the Indo-Pak relations are quite different. It is an analytical risk to predict the long term scenario in the Indo Pak scheme of things. Relations between the two states, and consequently the resolution process, have swung between extremes of conciliation and hostility. It would be too early to suggest that the process of resolution has been able to stabilize on a path to eventual reconciliation.

The approach to resolution is still captive to a mindset, characterized by belligerence, bellicosity, rancour and sustained belief in eternal intractability. This transforms the objectives of the peace process into short term point scoring game rather than a long term process of resolution. The yard stick for success in the Indian and Pakistani bureaucratic and political institutions still seems to be the capability to impede resolution rather than to facilitate resolution.

Peace Process

A process of dialogue, negotiations and resultant CBMs is on between the states of India and Pakistan, euphemistically known as the peace process. Although both the countries have held dialogues since 1947, we trace the origins of the current peace process to Lahore summit in 1999, and identify different phases before the current peace process actually started to yield results in the form of continued formal, civilized interaction and formulation and implementation of a series of CBMs.

India - Pakistan Engagement[1]

Phase 1: Pre Lahore Summit (1997 – 1998)

The concept of a composite dialogue between India and Pakistan conceptualized in the late nineties. Between March 1987 and September 1998, the Foreign Secretaries of India and Pakistan met on several occasions to work out the details for a new format to conduct India, Pakistan bilateral talks.

An agreement on the new format was formally announced in New York, in September 1998, following a meeting of the Indian and Pakistani Foreign Secretaries. Under the new format both sides agreed to a broad based approach, which aimed at addressing outstanding issues between India and Pakistan, through a composite dialogue of eight subjects, at levels specified in the joint statement. The new format signalled the start of a structured phase of talks, compared to the earlier format of Indo-Pak talks, conducted at the Foreign Secretary level without any fixed agenda.

Under the agreed format, discussions were to be conducted on eight identified subjects in the following manner:

Peace and Security including CBMs at the level of Foreign Secretaries

Jammu & Kashmir at the level of Foreign Secretaries

Siachen at the Level of Defence Secretaries

Tulbul Navigation Project at the level of Secretaries, Water and Power

Sir Creek at the level of Additional Secretary (Defence)/ Surveyor General

Terrorism and Drug Trafficking at the level of Home/Interior Secretaries

Economic and Commercial at the level of Cooperation Commerce Secretaries

Promotion of Friendly Exchange in various fields at the level of Secretaries Culture

The Foreign Secretaries of India and Pakistan met in Islamabad on 15-18 October 1998 for separate discussions on Peace and Security including CBMs, and on Jammu

& Kashmir. Discussions on the other six agenda items were held at New Delhi between 5-13 November the same year. (Ministry of External Affairs, New Delhi)

Phase 2: Lahore Summit (February 1999)

In response to an invitation by the Prime Minister of Pakistan, Mr. Muhammad Nawaz Sharif, the Prime Minister of India, Mr. Atal Behari Vajpayee, visited Pakistan from 20-21 February, 1999, on the inaugural run of the Delhi-Lahore bus service. The Prime Minister of Pakistan received the Indian Prime Minister at the Wagah border on 20th February 1999.

The two leaders held discussions on the entire range of bilateral relations, regional cooperation within SAARC, and issues of international concern. The text of Lahore declaration importantly outlined that the two governments:

Shall intensify their efforts to resolve all issues, including the issue of Jammu & Kashmir.

Shall refrain from intervention and interference in each other's internal affairs.

Shall intensify their composite and integrated dialogue process for an early and positive outcome of the agreed bilateral agenda.

Shall take immediate steps for reducing the risk of accidental or unauthorized use of nuclear weapons.

Reaffirmation of their commitment to SAARC.

Reaffirmation of condemnation of terrorism in all its forms and manifestations and their determination to combat this menace.

Shall promote and protect human Rights and fundamental freedoms.

The Lahore Summit was an explicit show of camaraderie with perhaps an overdose of hugging. Even the contents and the settings of the summit did indicate chances of change for the better. However, there were perceptible undercurrents of disagreement. Reports or rumours of the unhappiness of the Pakistani Army and protests by the right wing parties provided an insight into the discord within. Adherents of the discord theory were proved right quite soon with the Kargil conflict. Once again the peace process was stalled while still in its nascence.

Phase 3: Kargil Conflict (May 1999 – July 1999)

In early 1999, India and Pakistan got thrust into an armed conflict in Kargil across the LOC. There were thousands of casualties from both the sides and there were increasing chances of the conflict blowing into a full fledged war between the two countries and spreading to other parts of the LOC and the international border between the two countries. The risks of an unintended nuclear escalation between two nuclear armed states engaged in a conflict seemed very real and raised fears in the international community. International intervention prevailed and Pakistan finally withdrew its forces. President of USA personally intervened and after conferring with the Pakistan Prime Minister ensured that the conflict in Kargil ends. The conflict did end but stalled the faltering, infant steps towards peace and strengthened the anti dialogue elements in both the countries.

Phase 4: Pre Agra Summit (1999 – mid 2001)

This was the cooling off and the warming up phase. Predictably the immediate impact of Kargil was the absence of interaction between the two countries. Peace and resolution took a back seat. Changes took place in Pakistan. The Chief of the Pakistani Army, General Musharraf took over the reins of governance in the state of Pakistan after deposing the Prime Minister Nawaz Sharif. The focus shifted to the internal situation in Pakistan and it took time for India to comprehend the merits of dealing with General Musharraf.

However, despite the net loss phase for peace, things did start to move and in November 2000, the Indian Prime Minister offered an internal ceasefire. This would have meant non initiation of combat activities against the non state armed groups active in the valley. The biggest ethnic armed group reciprocated positively and amid disagreement within the armed group retracted within two weeks. The ceasefire was rather hurried and perhaps devoid of unanimous institutional support across India, Pakistan and J & K and seemed to bear the signature of the short term, point scoring strategy.

The Indian Government called off the non existent ceasefire on May 23, 2001. The statement also expressed gratification over the relative peace along the LOC, on account of restraint by both India and Pakistan and decided to continue restraint as hitherto. It further mentioned that an invitation to General Musharraf would be sent shortly and that India was yet again offering hand of friendship, reconciliation, cooperation and peace to Pakistan.

Phase 5: Agra Summit (14-16 July, 2001)

The Acting High Commissioner of India in Islamabad called on the Foreign Secretary of Pakistan on the morning of May 25, 2001, and handed over to him a letter from the Prime Minister of India for General Pervez Musharraf, Chief Executive of Pakistan, inviting him to visit India. This was a welcome thaw after Kargil and signalled the resumption of dialogue between India and Pakistan. The summit was eventually held on 14-16 July, 2001 and by that time General Musharraf was the President of Pakistan. He was sworn in on June 20 2001 as the president of Pakistan.

In the run up to the Agra Summit the Indian state announced a series of unilateral CBMs on July 4, July 6 and July 9, 2001. These included scholarships for Pakistani students, cultural exchange, steps for release of all civilian Pakistani prisoners, easing restrictions on travel. CBMs related to travel would have meant allowing Pakistani Passport holders to come by road and obtain visas at the check-post at Attari, additional posts at Munabao, in Rajasthan, similar check-posts along the International Border and the LOC in Jammu & Kashmir.

The Agra Summit was billed to be a historic summit in the light of the indications of flexibility and realism emanating from both the states. There was however a chronic overdose of media hype. The hyped build up of the summit magnified the expectations, and ultimately resulted in a summit devoid of any results. For three days the summit and the news related to the summit was aired non stop on the electronic media. The end was an anti climax. There was no joint statement and the public perception was that the summit was a failure. The public perception of a failed summit could perhaps not have been more unambiguous.

The Agra Summit at least did set an example of the demerits of an overdose of media. The instant accessibility of the summit proceedings and non stop analysis not only hyped the expectations but also put pressure on both the states. At the end, both the heads of the states tried to use the media to address their domestic constituencies and were more interested in being seen as unrelenting and tough negotiators rather than sincere peacemakers.

The Foreign Minister of India addressed a press conference on 17/07/2001. Between the lines it emerged that the centrality of the Kashmir issue in the negotiations process was a bone of contention. Further, India was keen to see a stop to what it called cross border terrorism. These are familiar themes at Indo Pak negotiations process and the absence on agreement on some issues was disappointing.

Phase 6: Parliament Attack and the Military Build Up (2001-2002)

The Indian parliament witnessed an armed attack on December 13, 2001. The Indian government alleged that a Pakistani based non-state armed group was behind the attack. Within six days of the attack, explicit signals of aggression started to emit from New Delhi. The Indian state launched "Operation Parakaram" meaning valour, on December 19, 2001. By early January, India had mobilised over 500000 troops and its three armoured divisions along the 3000 kilometres frontier with Pakistan. This meant the largest mobilization of Indian armed forces. The intentions of the Indians in case of non compliance with their set of demands were not veiled and rather the most overt in recent history. India also placed its navy and air force on high alert and deployed nuclear-capable missiles. Pakistan reacted with counter mobilisation. Indian intentions were replicated by Pakistan and reaction of the Pakistani state in the event of Indian aggression was clear. The deployment by the two states was the largest since 1947. Once again the prospect of an unintended transformation of conventional war into a nuclear war between two nuclear armed states seemed very real.

Post Parliament attack, the diplomatic relationship between the two states had been scaled down unilaterally by the state of India. Hence the diplomatic communication was virtually non existent. India recalled its envoy to Pakistan for the first time in thirty years. India had previously withdrawn its ambassador prior to conflict breaking out in 1965 and 1971. Belligerent statements in public were the sole, visible mode of communication for more than seven months. A flurry of diplomatic activity especially by Britain and the United States helped ease the tensions and start a process of the armies moving back to their earlier positions. Indications of easing of tensions started with arrival of United States Deputy Secretary of State Richard Armitage on June 6 2002, in Islamabad, followed by a visit to New Delhi. Following his departure there was a visible dilution to the longest military mobilization between the two countries.

Phase 7: Pre SAARC Summit Phase (late 2002 – late 2003)

The standoff between India and Pakistan which saw the two countries on the brink of a war started to ease. However the prospects of imminent resumption of dialogue remained distant. India once again put up the condition, that dialogue can take place only if there is a full end to support for what it called cross border terrorism. The immediate task was to undo the damage i.e. restore diplomatic ties and travel links between the two states which had been discontinued in the aftermath of the Parliament attack.

There is a predictable pattern to the Indo-Pak scheme of things. Things began to fall in place after the "hand of friendship" speech delivered by the Prime Minister of India Mr. Atal Behari Vajpayee in Srinagar in April, 2003. Thereafter a process of normalisation started to set in, primarily due to international pressure. Full scale diplomatic ties were revived. Pakistan High Commissioner reached India on June 30, 2003. Indian High Commissioner reached Islamabad on July 15, 2003. Lahore-Delhi bus Service was restored and re launched on July 12, 2003.

Pakistan Prime Minister Mir Zaffarullah Jamali declared a unilateral ceasefire along the LOC on November 23, 2003. Apart from the ceasefire other offers made to the Indian state were:

Willingness to start a bus service between Muzafarabad and Srinagar.

Pakistan's willingness to go beyond its stated position that the dispute must be resolved in accordance with the UN Resolutions.

Willingness to start a ferry service between Mumbai and Karachi.

Revival of air links.

Opening up of Khokhrapar-Munabao route closed since 1965 war.

Invitation to India to initiate talks on the bus service between Lahaore and Amritsar.

Proposal for revival of train links.

Holding talks so that Indian and Pakistani authorities can release long-serving prisoners from each other's countries.

Allowing people above 65 to cross the border crossing at Wagah by foot.

Two days later, India accepted Pakistan's offer of ceasefire along the LOC and asserted that it would extend to Siachen. The process of normalisation carried on. Air links were restored on January 1, 2004.

Phase 8: SAARC Summit (January 2004 – August 2006)

The statements and events of the past one year started to make sense, when the indications of a détente in sight were set in progress by the dramatic development on the sidelines of the twelfth SAARC summit in Islamabad in January 2004. India and Pakistan agreed to resume an official level dialogue after a three year hiatus. A joint Indo Pak press statement was released on January 6, 2004. The joint statement noted

that New Delhi agreed to settle Kashmir dispute to the satisfaction of both the sides and that Islamabad would not permit any territory under Pakistan's control to be used to support terrorism in any manner. After three days of official level talks the two countries announced on 18 February 2004 that they had decided to resume their bilateral "composite dialogue" on eight issues. These included two rounds of talks on Peace and security, including CBMs and Jammu and Kashmir- at the Foreign Secretary level. The two foreign Ministers were to meet in August 2004 to review process.

After the SAARC meeting there have been more than fifteen encounters between the representatives of the two countries at various levels.

February 17-18 2004	Murree	Meeting of Foreign Secretaries of India and Pakistan
June 20-21 2004	China	Meeting of Foreign Ministers of India and Pakistan
June 26-27 2004	New Delhi	Meeting of Foreign Secretaries of India and Pakistan
June 29-July 2 2004	Jakarta	Meeting of Foreign Ministers of India and Pakistan
July 20-21 2004	Islamabad	Meeting of Foreign Ministers of India and Pakistan
August 11-12 2004	Islamabad	Meeting of Commerce Secretaries of India and Pakistan
September 8 2004	New Delhi	Meeting of Foreign Ministers of India and Pakistan
September 24, 2004	New York	Meeting of President Musharraf and Prime Minister Manmohan Singh
November 23, 2004	New Delhi	Prime Minister Shaukat Aziz's first visit to New Delhi
February 16-17, 2005	Islamabad	Foreign Minister of India visits Pakistan
April 18, 2005	New Delhi	Meeting of President Musharraf and Prime Minister Manmohan Singh
September 1, 2005	Islamabad	Meeting of Foreign Secretaries of India and Pakistan
October 3, 2005	Islamabad	Meeting of Foreign Ministers of India and Pakistan

Some important CBMs were implemented during this period. The Srinagar-Muzafarabad bus service was started, Rawalakot-Poonch bus service was started, Lahore-Amritsar bus service was started, Amritsar-Nanakana Sahib bus service was started. Delegations of India and Pakistan met on October 29, 2005, and five crossing points were opened across the LOC to facilitate travel of relatives in the wake of the severe earthquake of 8 October 2005, which devastated large areas of J & K. Crossings were to be permitted on foot. The proposal was put forward by President Musharraf.

Phase 9: Mumbai Blasts

A series of seven explosions killed about 180 people on July 11, 2006, in Mumbai. This act of violence came close to derailing the ongoing peace process and once again exposed the fragility of the peace process. The Indian perception emanating from a series of statements was that Pakistan was not doing enough to check acts of terror being committed against the Indian state. The Prime Minister made a statement that the peace process between India and Pakistan cannot progress unless Islamabad cracks down on terrorism. There was a perceptible hardening of positions. The meeting of the Foreign Secretaries of India and Pakistan slated to be held next week was cancelled. Pakistan' Foreign Secretary called the postponement of talks a negative development and denied allegations that Pakistan had allowed its territory to be used by militants for attacks on its neighbours.

Phase 10: Post Mumbai Blasts – Havana Declaration

The Prime Minister of India and the Pakistani President again met in Havana and the show of camaraderie was once again visible. A joint mechanism to tackle terrorism was jointly agreed upon and the foreign secretary talks were to be restarted.

A mauled peace process is likely to move on. But the threat of violence and the overreaction to violence will continue to haunt the peace process.

Current Indian and Pakistani Stands

The net result so far in terms of steps towards resolution can be defined by the emerging postures of flexibility by India and Pakistan. Pakistani President General Musharraf has taken the lead in exhibiting leadership, by being able to formulate a

policy which indicates a perceptible shift, away from the traditional ideological perspective of the Pakistani state. The Indian state has responded but perhaps not in equal measure. There is continued ambiguity over the levels of institutional sanctity to the emerging Indian and Pakistani postures.

Current Pakistani Stand

Pakistan rules out converting the LOC into an international border and has come up with the concepts of self rule, joint control, demilitarization and division of J & K into different zones. These concepts have not been defined in detail and are perhaps in a state of evolution.

The perception of a joint control could mean no ambiguity about the sovereignty of areas under Pakistani administration and provinces of Jammu and Ladakh under the Indian administration. However the Kashmir valley could be put under the joint control of India and Pakistan. Or it could mean putting the entire state of J & K under the joint control of India and Pakistan, in the form of different zones. Joint control is perhaps similar to the more dignified terminology of shared rule.

Self rule as a federal concept indicates independence of a Provincial Government to deal with its internal matters. The level of independence is not fixed and could vary depending on the agreed arrangement between the Central and the Provincial Government. Self rule in the context of joint control becomes an interstate concept. How it would evolve as an interstate concept is still vague.

Demilitarization is again a very broad concept and could mean relocation, reduction in numbers of troops or complete withdrawal. Again the concept has not been delved in detail.

Mr. A G Noorani suggests that there is a perceptible shift in the thinking among Pakistani leaders: " President Musharraf is the first leader of Pakistan to : a) opt for self governance in preference to self determination which implies change of borders; b) keep UN resolutions aside; c) give up plebiscite as well as independence; d) desist from demanding any territory for Pakistan; e) reject the communal criteria; f) not demand Kashmir's secession from India; and g) encourage Kashmiris to talk to New Delhi."[2]

General Musharraf's proposals despite being in a state of evolution have been able to generate a positive debate among significant sections of intellectuals across India

and Pakistan. It signifies a major shift in the traditional Pakistani stand and failure by the Indian state to replicate in equal measure could have a negative impact on prospects of peace both in the short term and the long term.

Current Indian Stand

The Indian state too has given indications of flexibility. All the previous three Prime Ministers PV Narasimha Rao, I K Gujaral and A B Vajpayee made statements during their Prime Ministerial tenure, which suggested that the Indian state was willing to be flexible and in favour of a negotiated settlement. The current Prime Minister Mr. Manmohan Singh has carried on the peace process started during the tenure of Mr. A B Vajpayee.

We have seen earlier that the "hand of friendship" speech in Srinagar by Mr. A B Vajpayee was a precursor for change. Mr. Manmohan Singh has made certain statements which give indications of a flexible approach. The Indian state has ruled out changes in geography or redrawing of the borders. India is clear about what is unacceptable to them. However, they are not very clear as to what is acceptable to them. One of the problems with the Indian approach is that their statements are usually metaphorical and metaphors do tend to have multiple meanings.

The current Prime Minister Mr. Manmohan Singh too has made some speeches which indicate a vision for the future of the region: The March 24, 2006 speech of the Prime Minister Manmohan Singh at the launch of the Amritsar-Nankana Sahib bus service is of particular significance. Offering a treaty of peace, security and friendship to Pakistan, Prime Minister Manmohan Singh said:

"Both sides (India and Pakistan) should begin dialogue with the people in their respective areas of control to improve the quality of governance so as to give people on both sides a greater chance of leading a life of dignity and self respect---Borders cannot be redrawn but we can work towards making them irrelevant – towards making them just line on the map. People on both sides of the LOC should be able to move freely and trade with one another---I also envisage a situation where the two parts of Kashmir can, with the active encouragement of the governments of India and Pakistan, work out a cooperative, consultative mechanisms to maximize the gains of cooperation in solving problems of social and economic development of the region."[3]

In an interview in 2004, Prime Minister Manmohan Singh stated:

"Short of secession, short of redrawing boundaries, the Indian establishment can live with anything. Meanwhile we need soft borders – then borders are not so important."[4]

The ultimate test lies in being able to translate these words into deeds. So far no decipherable indications have emerged to suggest that translation of words into deeds has actually begun. The feeling of an impending attitudinal and behavioural change is not visibly in sight and is still elusive. The Indian state craft is firmly impervious to the resolutive content of the words expressed by the current Indian Prime Minister.

Engagement of the Leadership of J & K

Sections of the leadership of J & K S have been engaged at different levels by the states of India and Pakistan. But the engagement by no means constitutes the institutional involvement of the leadership of J & K S or J & K. The involvement has been largely ornamental and selective. Sections of the leadership in J & K S have held dialogue with the Prime Minister of India and the Prime Minister and President of Pakistan. These have mostly been unstructured dialogues. There is not even a formal consultative role for the leadership of J & K.

Two round table conferences involving the leadership of J & K S have been initiated by the government of India. But these have been marred by lack of inclusive participation as sections of the leadership of J & K S have declined to attend the round table conferences held so far. The round table concept took most of the leaders of J&KS by surprise and the government of India felt it was competent to devise a structure for the concept of the round table without any consultations with various sections of the leadership in J & K S. Ironically the only roundtable with a truly inclusive spread was held in Kathmandu and Islamabad by an NGO viz. "The Pugwash". It had invited leaders from both sides of J & K, representing all ideological shades.

Dialogue or negotiations involving the J & K leadership has been at the whim of India and Pakistan. The variables of who to invite, when to invite, whether to invite, why to invite, why not to invite- are decided by India and Pakistan. The people of J&K have absolutely no role in electing or selecting the sections of J & K leadership who should go and initiate a dialogue process with either India or Pakistan. If J & K interests are separate from that of Indian and Pakistani interests and if a dialogue

process is rooted in consent and sincerity the very least that should have been done is to allow the people of J&K to exercise discretion over who should represent them rather than the Indian and the Pakistani state exercising discretion over who should represent the people of J & K. While the Indian and the Pakistani states need to comprehend the futility of an exclusive and selective ornamental dialogue process with sections of leadership in J & K, the selected J & K leadership needs to comprehend the merits of an all inclusive process. The biggest threat to the J & K interests emanates from the concept of sole representation. There is no sole representative in J & K and any clamour for sole representation of the people of J & K by any section or thought of leadership in J & K is bound to facilitate the war of attrition within the leadership in J & K. And should the leadership of J & K desist from accepting reality and refuse to move out of delusions of sole representation, it will only institutionalize the exclusive role of India and Pakistan in deciding the future destiny of the people of J & K.

Levels of Violence

Irrespective of the prolonged period of civilized interaction between India and Pakistan, J & K S continues to be haunted by a primitive era of violence. The pain and the sufferings of the people of J & K S continue unhindered. No concrete proposals have been put forward to ensure an end to violence in J & K S. Although a ceasefire is in place across the LOC and violence has decreased along the LOC, the levels of violence are still very high in J & K S. The results of the peace process have so far failed to percolate down to the ground in the form of an internal ceasefire or decreased levels of violence or decreased levels of human rights violations.

A concept of **"acceptable and manageable levels of violence"** seems to have emerged. Related to this concept is the concept of "**acceptable conflict area**" and "**acceptable victims of violence**". A level of violence in J & K S politically and militarily manageable by India is deemed as acceptable. The conflict area has to be acceptable so has to be the victim. As long as violence is confined to J & K S and as long as the victim is acceptable i.e. he or she is a resident of J & K S, the peace process has and is likely to move on. Subject to the adherence of the concepts of acceptable and manageable levels of violence, acceptable conflict area and acceptable victims of violence- violence in J & K S is not really a problem for either India or Pakistan or the international community. Violence in J & K S has been relegated to

token protests of human rights violations either by Pakistan or Indian accusations of cross border terrorism.

Levels of Human Rights Violations

Human rights violations and violence have a correlation and the high levels of violence in J & K S mean high levels of human rights violations. The fatalities of non-combatant civilians continue to be a daily occurrence. Arbitrary arrests, draconian laws, emergency powers of disturbed area act, torture continue to be the rule rather than an exception.

Victims of Violence

The plight of the victims of violence remains unchanged. The state of India does have provisions to help the heirs of those killed by militants. However there are no visible rehabilitation programmes for the heirs of those killed by the security forces. Pakistan does informally try to aid the heirs of those killed by the Indian security forces. However there is no long term strategy to rehabilitate the victims of violence.

Displaced Persons

People who have migrated to other parts of India and to the other part of J&K due to the conflict continue to languish in impoverished conditions. A large number of Kashmiri Pandits are living in camps across India in abysmal conditions of squalor. Similar is the case of thousands who migrated to the other part of J & K. There is no policy to facilitate a dignified and secure return of these displaced persons. While the Pandits feels insecure due to continuing violence, the migrants from the other part of J&K who did try to come back were often humiliated by forcing them to either work for the security agencies or make them come for weekly or daily attendance at the various military camps spread across J & K S.

Current Political Landscape

The political parties across J & K are ideologically divided between those who accept the constitution of either India or Pakistan and contest elections and those who consider J & K to be a disputed territory and refuse to contest elections under either Indian or Pakistani Constitution. Parties contesting elections across the two parts of J&K and taking part in the administration of the state are called the mainstream parties while parties solely devoted to the resolution of the dispute are called the separatists. Apart from the political parties there are also the armed groups who are carrying on an armed movement in J & K S against the Indian rule.

The mainstream parties have traditionally been seen as the Indian and the Pakistani face of the leadership in J & K S and J & K M respectively. The last two years have seen a strange ideological rethinking in the mainstream parties in J & K S. They seem to have gone into an ideological drift and have postured themselves very close to the postures of the separatists. This is mainly viewed as a free fall of ideology and its causes are traced to exigencies in politics and attempts by the mainstream parties to occupy- what would have been the bargaining space of the separatists. The ideological meandering by the mainstream parties is likely to impede rather than facilitate the resolution process.

Current Peace Process- Lack of Alignment

The period from January 2004 onwards is perhaps the most prolonged period of civilized interaction between the states of India and Pakistan, without taking a break for resorting to the primitive. The futility of an eternal state of conflict does seem to have descended on the elites in both the countries. There has been a perceptible change for the better in the stereotyped hostile mindset. Of equal importance is the silent facilitation by the international community, especially the USA and UK. Violence will be an important variable in determining the future course of the peace process. Continued violence is bound to result in the stagnation of the peace process at a certain stage.

Both the Indian and the Pakistani current positions indicate a welcome departure from their traditional positions. The traditional positions were rooted in rigidity and the unachievable. Traditional positions of both India and Pakistan imply a claim on the entire state of J & K. The problem however is that whether the deviations from the

traditional positions of both the states have the requisite institutional sanctity. Further the sustainability and sincerity of the positions is suspect. We have seen that since 1999 the process of negotiations has vacillated between extremes. The current espoused Indian and Pakistani positions of flexibility should have meant conflict transformation. That hasn't really taken place. The dispute seems to be firmly stuck in an irresolvable state. Mumbai blasts is an example- Two countries by virtue of their statements, postures and show of camaraderie over the last three years have been giving an impression that a historical moment might be in sight and fifty seven years of hostility may be transformed into a new era of peace. Yet a single incident in Mumbai is enough for the two countries to revert back to traditional belligerent phraseology.

The peace process has followed an undesirable pattern of wild swinging between talks and show of belligerence. Mumbai is the latest addition and certainly not the last addition. Despite the continued interaction and the spate of CBMs, the peace process is still fragile.

The world of CBMs

A spate of confidence building measures (CBMs) have been announced by the states of India and Pakistan. "There are a wide range of CBMs. Henry L. Stimson Centre describes "communication, constraint, transparency and verification measures as the primary CBM "tools", designed to make behaviour of states more predictable by facilitating communication among states and establishing rules or patterns of behaviour of states' "military forces"." These are preventive measures aimed at minimizing the chances of conflict and the implementation and success is determined by the institutional set up of the states. The other facet of CBMs is the more visible facet and pertains to increasing people to people contact and facilitating the setting up of an era of increased communication and interactions between the peoples of the two states.

The success of CBMs pertaining to increased institutional communication between the two states is an extremely desirable proposition. Military hotlines, hotlines between Prime Ministers, declaration of non use of force, prior notification of military exercises, non intrusion of air space, non-attack of nuclear facilities, bilateral accord on chemical weapons etc. are some of the CBMs introduced between India and Pakistan. Sadly the record of their implementation is not very encouraging. They were not used during the recent military build ups between the two countries.

Srinagar- Muzafarabad bus service: Opening up of different routes of travel has been more visible facet of the CBMs. The ones pertaining to travel across the LOC are the most significant. They are visible changes and depict incremental changes in the status quo. Srinagar Muzzafarbad has been a historical travel route. Travel on this route was closed and forbidden since 1947. The same route was opened under "controlled conditions" for the peoples of the two parts of J & K and the forbidden zone could now be crossed with the help of a local document not a passport. This has a lot of political significance in J & K and should have translated into euphoric crowds onto the streets with a sense of achievement. It should have symbolized change and to a certain extent erosion of the status quo. Yet it did not have the desired impact on the ground.

Srinagar Muzzafarbad bus service - psychology hijacked: This bus service had tremendous psychological scope to herald change. Instead of presenting it as a sacrificial product and attributing the opening up of this travel route to the pain, sufferings and sacrifices of the people of J & K, it was attributed to the statesmanship of the leaders of India and Pakistan. The Chief Minister of J & K at that time pitched in and tried to showcase the bus service as a wonder of his statesmanship. Ironically the Chief Minister happened to be the Home Minister of India when the armed movement started in 1989 and is identified with human rights violations rather than sacrifices. The service was expected to act as a psychological facilitator for flexibility and strengthen proponents of dialogue and negotiations. With the psychological component hijacked the bus service failed to have any impact on the ground.

Srinagar Muzzafrabad bus service - procedural maze: Travelling across the LOC for the residents of J & K is a procedural maze. Applications for travel have to be accepted by both India and Pakistan. Apart from impeding the feeling of change, the procedural maze is a perpetual reminder of the subservience of the rights of the people of J & K, rather than a mode of fulfilling aspirations. Ironically permission to travel is denied to people who deserve it most. Parent wishing to meet their sons who are in J & K M either as migrants since 1989 or as militants or as stranded individuals are as a rule denied permission to travel by bus.

Travel across LOC, five crossing points - procedural maze: The five travel points set up across the LOC to facilitate the reunion and meeting of relatives in the wake of the catastrophic earthquake, got mired in procedural maze. While the ostensible purpose of the crossing points is the reunion of relatives, travel clearance to most of the people having relatives across the LOC has not been given.

Throwing good money after bad money: Even the most liberal accounts of flexibility by either India or Pakistan does not transform into a lot that the two countries could offer to each other or to J & K. If the solution is short of target the more visible CBMs pertaining to travel across the LOC could have been preserved for the future and implemented only after comprehending the local factors. At the moment the two countries seem to be liberally doling out CBMs, unmindful of the problems that they might be creating for themselves in the future by not being able to assess the potential impact of these CBMs. The fatal bilateral streak of the two states is one of the main reasons for the perceived failure of the CBMs.

CBMs- anonymous origins, ambiguous destinations: The problem with the CBMs is that they seem to bear the typical signature of an external facilitator. The concept has been conceptualized in isolation of the psychological variables and the local realities. **Per se they are excellent concepts but suffer from problem of implementing the "right thing at the wrong time and through wrong hands".**

Expectations

Conflicts all across the world follow a certain pattern. The show of camaraderie, statements of leadership indicating vision and change build up a momentum which finally peaks with an agreement. India and Pakistan have built momentums many times in the past and then ended with an anti climax. The anti climax seems to be the preferred prediction of the institutions and the peoples of both the countries. A sense of pessimism about the success of the peace process is a grave psychological impediment.

Impeding a national consensus - Hate campaign, vicious propaganda

A reality analysis is that the era of civilized behaviour as depicted by summits and meetings between the two countries may not be as civilized. Prime time slots are still utilized by the electronic media of both the countries to market demonized and inhuman versions of each other. Countries on the verge of making history evolve a consensus among the peoples. In the Indo-Pak scheme of things the state media is an indicator of change. As on date there is no evidence that the two countries have decided to utilize their state media to evolve a consensus among the people. Neither of the two governments would want to go against the popular mood in their respective countries. The mood being created is that of negative portrayal of hostility. If history is in the making, evolving a consensus among people and desisting from negative portrayal would have been a compulsion. Regrettably the continued malicious

propaganda carried out on the electronic media indicates that resolution of the conflict might be still a very long way.

Reaction to violence

Violence has been able to dictate or derail the pace of the negotiation process. Even the latest Mumbai blast renewed fears of sustainability of the peace process. This is interrelated with the sincerity behind the frequent peace proposals. Violence can either be a real deterrent to the peace process or an excuse to opt out or delay the peace process. Either way sincerity is essential-Pakistan would have to be sincere enough in exhausting all its influence to ensure that violence is not a deterrent to the peace process and India would have to resist the temptation of making violence a convenient excuse and in the process making peace process a hostage to violence.

Bilateralism

The peace process suffers from a fatal overdose of bilateralism. Irrespective of the public assertions of either of the two states pertaining to the role of the people of J & K in resolving the conflict, the reality is that the leadership of J&K has no decisive role in the peace process. The irresolvable state of the conflict is partly due to the firm belief of the two states about their capabilities in exclusively resolving the conflict. The decades of failure and the human costs incurred seem to have failed to create scope for introspection.

American Intervention

The international facilitation in this conflict is primarily the American facilitation. The level and nature of facilitation is again defined by the American interests in India and Pakistan. While the conflict may have not been against American interests in the past, persistence of the conflict seems to be against American interests in the new emerging scenario, where America has found scope for economic and strategic partnership with India. And the possible spill over of the new brand of violence onto the American soil is a reality. Balancing its interests with historical and current ally in war against terror, Pakistan, with newfound ally India has meant exclusive focus on the "land" parameters of the conflict. The parameter pertaining to people i.e. the people of J & K have been ignored. In the short-term the American interests are best suited in averting a war, a show of attempts at resolution rather than resolution- a deceptive calm rather than eternal calm. This means that while the borders will see no fatalities, dialogue will continue, both India and Pakistan will behave in a civilized

manner and adhere to diplomatic etiquette- J & K will continue to be in a state of primitive era with no letup in the fatalities. Covert American facilitation has even extended to covertly facilitating the definition of the leadership in J & K – a version of leadership which is selective and determined by balancing the American interests in India and Pakistan. The current situation in J & K is not too conducive for the American balancing of interests. Pockets of grievances against the American are particularly undesirable in the current environment in J & K. The Muslim population in J&K, the Islamic flavour of the armed resistance in J & K, "American interests" centric intervention and America's war on terror could all result in a vicious mix and sow the seeds for recruitment towards new international, religious objectives. This would be disastrous for the people of J & K, who could be sucked into a new conflict for no fault of theirs.

External stimulation versus internal stimulation

External stimulation for the peace process is unlikely to yield a decisive outcome. While there are merits in international facilitation and their role in averting war and initiating a process of dialogue cannot be ignored, exclusive reliance on international intervention could confuse the conflict even further in the long term. The resolution process lacks sufficient internal stimulation.

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Chapter 5

Evolving the Eclectic Model

Methodology

Defining the Contours of the Problem

Conceptualizing the Psychological Dimensions

●Intangible Assets of the People of J & K

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Detailed Conceptualization of the Reference Point Model

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The Process of Accommodation, and the Dynamics of an Overlap

●Defining an Overlap

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●Evaluating the Indian Claim on the Reference Point Model ●Evaluating the Pakistani Claim on the Reference Point Model ●Evaluating the J & K Claim on the Reference Pont Model

Creating the Indian Overlap on J & K S

●Structuring the Indian Overlap ●The Internal Aspect ●Mapping the Indian Overlap (Internal Aspect) ●The External Aspect ●Mapping the Indian Overlap (External Aspect) ● The Economic Aspect ●Mapping the Indian Overlap (Economic Aspect) ●Defence and Security Aspect ●Mapping the Indian Overlap (Defence and Security Aspect)

Mapping the Pakistani Overlap on J & K M

●Summary of the Pakistani Overlap on J & K M

Creating Sectoral Overlaps between the Two Parts of J & K

●Economic Union ●Joint Immigration Control for Residents of J & K M and J & K S within J&K ●Joint Management of Natural Resources ●Sector Specific Cooperation, Coordination, Consultation

Structuring the Pakistani Overlap on J & K S and Indian Overlap on J & K M

Mapping the Pakistani Overlap on J & K S

Mapping the Indian Overlap on J & K M

Summarizing the Context and the Contents

Evolving the Eclectic Model

The model that we want to create is an attempt to draw on to the various dimensions of the dispute and facilitate proportionate access of all the relevant dimensions into the resolution process. It is essential to delve deeper and carry out an intense, multi dimensional evaluation of the dispute. The preceding chapters have given us an insight into the various oblique, abstract aspects of the dispute. These seemingly passive aspects represent the psychological and invisible dimensions of the dispute and may not be quantifiable in terms of claims, but have strong psychological ramifications for any process aimed at resolving the dispute. The model is an attempt to incorporate these invisible dimensions of the dispute into the resolution process, along with the other more visible dimensions of the dispute.

In catering to the various dimensions of the dispute, the eclectic model aims at a desired level of achievability for the claims of all the parties. It is in essence an attempt to eclectically accommodate and assimilate the invisible, psychological dimensions of the dispute and the visible claims of the parties to the dispute. The model is by no means exhaustive and is expected to evolve. The treatment is deliberately abstract with the motive of partly shifting the exclusive focus, from the limited arena of competing claims of the parties, to the vast canvass of latent realities.

The problem is essentially political but may have overshot the political contours and assumed psychological, historical, economic, social dimensions. Sentiment, generational accumulation of hostility and distrust, sacrifices and their sanctity for the people of J & K, urgency to reconcile with realities, legal history, absence of scope for geographical changes, are all very important factors. We would have to draw on all these factors and see whether unanimity can be achieved at a point which is well short of the espoused target of each party. There is an implicit presumption of flexibility by each party and a movement inwards from the stated positions. This implicit presumption rules out the stated positions of status quo, merger with Pakistan, merger with India and Independence.

In our model the focus is on the people of J & K, rather than the land. The sentiment of the people of J & K is the cornerstone of the model. Equal emphasis is however laid on the need for the sentiment to reflect reality. We have attempted to blend sentiment with reality. Sentiment is a measure of aspirations of the people of J & K. Reality is defined by accommodating Indian and Pakistani claims. The role of history is largely confined to the indication of the existence of a dispute and is a valuable guide to areas of avoidance rather than emulation.

The model starts from a reference point and we believe that a reference point inspired by the sentiment is the independent homeland model for J & K. The concept of independent homeland will be diluted when we try to address the competing claims of New Delhi and Islamabad and the ground realities of the issue. A point of convergence will have to be found out where the extent of dilution of the independence model is acceptable to the people of J&K and at the same time acceptable and affordable to New Delhi and Islamabad. We are aiming at a model which will mainly exhibit the traits of an Independence model and also exhibit traits of the Indian and Pakistani models.

The concept of a reference point assumes importance in our model and is an attempt to address the looming shadow of psychological variables and their role in the success of any resolution process. We start from a reference point and try to evolve a model based on our evaluation of claims of the various parties. This makes it an evolutionary model rather than a devolutionary model. A devolutionary model would mean mainly corrections in the current power sharing structure in both parts of J & K. Similar results worked out by evolution or devolution is unlikely to translate into the same levels of psychological gratification. Devolution would mean a process wherein New Delhi or Islamabad devolve some quantum of powers towards the two parts of J & K. Evolution would chart a different direction and start by making the independence model as the reference point. The concept of a reference point in the course of evolution of a model is an explicit acknowledgement of the psychological dimensions. Acceptance of dilution of the independence model indicates the acceptance of ground realities. The direction that the process takes is as important as the result of the process. This summarises the psychology of "what and how" of J & K conflict. "What" we offer to the people of J & K is as important as "how" we offer it to the people of J & K.

Since verbatim political deliverance as defined by the sentiment is constrained in the process of accommodation of the claims of all the parties, sectors other than politics are expected to compensate the loss in political deliverance. While the field of

economics could partly help, the main thrust will have to be put on the abstract factors. And this would involve the mode of resolution. The process of resolution has to come across as an inclusive process involving people of J & K and showing due reverence to their aspirations. This makes the "context of the contents" of any solution as important as the "contents". Our model lays out the context and the contents separately. The context represents "how", while the contents represent "what". The context is a mode of incorporation of the abstract factors into the process of resolution and defines the conditions under which the contents would evolve.

A part of the psychological and political problem is how to cater to the two parts of J & K. The entire territory of J & K is disputed and under the administration of two different countries. Unification of the two sides of J & K is a strong component of the sentiment. It is difficult to restrict solution to one part of J & K. The model initially works on the Delhi, Srinagar and Islamabad route and any arrangement worked out is to be replicated on the Islamabad, Muzafarabad and Delhi route. The model further explores the scope of independent relationship between the two parts of J & K. The model expects to evolve a new set of overlapping relationships.

New Delhi would have to concede that J & K S is the manifestation of pain and violence. They will have to make a distinction between grievances and aspirations and not pass off aspirations as grievances. There is a pressing need for all the parties to abandon the mindset of pedantic geographers and instead focus on the people. The onus of deliverance lies mainly on India. Pakistan has a vital role in facilitating the deliverance. The leadership in J & K has the task of convincing the population about the achievability potential of the sentiment and ensuring support of a significant segment of the population in pursuit of realistic achievability. There is no room for negative emotional responses and positive emotional participation of the Kashmiri people is a pre requisite for the success of any solution. J & K has been the place of turmoil and it is essential that J & K is the main recipient of any positive deliverance. Any solution will ultimately be put to test in J & K and the situation in J & K will define the failure or success of any solution.

While there is a perception in New Delhi that clock cannot be turned back, our model differs and holds the perception that reality will ultimately find its equilibrium. India, Pakistan or the people of J & K can only facilitate or impede the process and make it painful or painless.

Methodology

Define the contours of the problem.

Conceptualizing the psychological dimensions of the problem.

Incorporating the psychological and other invisible dimensions into the model. Evolving the "context of the eclectic model".

Making the independent homeland as the reference point for evolving the contents of the eclectic model.

Evolving the "contents of the eclectic model", by diluting the independence of the independence model in the process of accommodating the claims of India and Pakistan. The process of accommodation is carried out by creating Indian and Pakistani overlaps on to the reference point model.

Defining the Contours of the Problem

The Visible Dimensions of the Problem

India, Pakistan and the people of J & K have competing claims on the state of J&K.

The claims find their origins in the decolonisation process that resulted in the independent countries of India and Pakistan and the disputed territory of J&K, in the year 1947.

The disputed state of J & K is currently divided into two parts. J & K M is under the Pakistani administration and J & K S is under the Indian administration.

A vast majority of the people of J & K aspire for the right to self determination to decide their future political destiny.

The state of India contests the claim for right to self determination and treats the conditional accession of 1947 as final.

The state of Pakistan supports the claim of right to self determination of the people of J & K, subject to narrowing down of the right of self determination to two options of accession to India and accession to Pakistan.

A vast majority of the people of J & K equate right to self determination with the concept of an Independent homeland.

The claims have institutionalized into streams of political thought and each stream of political thought has some level of support among the people of the state of J&K. While support for India is strong in some parts of the Jammu Province and Ladakh Province, support for Pakistan is strong in areas in J&KM and mainly in the Kashmir valley in J & K S. However, support for an independent homeland is massive across all the provinces of the state of J&K.

A new trend visible mainly in the last two decades is the ethnic aspirations spread among different regions of the state of J&K. Ethnic groups seem to have different aspirations.

Democratic exercise to find a solution rooted in majoritarianism is unlikely to succeed. The UN resolutions on J & K, which envisaged a Plebiscite is an example. Their role has been reduced to an international witness of the dispute. Their implementation based on the democratic evaluation of the opinions of the people of state of J & K in form of referendum has been stalled and in the process the region has been plagued with violence and thousands have died in pursuit and sight of the implementation of the UN resolutions.

Conceptualizing the Psychological Dimensions

It is important to understand the origins and importance of the psychological dimensions. A viable mode has to be found to concisely define the essence of these unquantifiable abstract concepts and incorporate these into the model. While the political claims and positions of all the parties are well known and documented, the psychological component is neither documented nor has it been conceptualized in a form so that it can be incorporated into the model. The conceptualization process provides an insight into the psychological impediments and their mode of incorporation.

Intangible Assets of the People of J & K

India and Pakistan are recognized states and are inherently equipped with all the tools at the disposal of a state to defend itself militarily, politically or at the diplomatic level. People of J & K in contrast do not have the recognition of a state and lack any tools of defence or formal espousal. They are a part of the big game by dint of what we call the intangible assets of the people of J & K. These intangible assets are the outcome of decades of adherence to a particular sentiment and exemplary sacrifices in pursuit of its cause. The investment in terms of human lives and having a conflict ridden place which incurs its own set of costs on the economy, society, culture, morality is massive. These intangible assets are sacred to the people of J & K and due reverence has to be accorded to them in any resolution process. The solution has to reflect reverence to these assets. Indifference or ignorance of these intangible assets in any resolution process is a sign of irreverence towards a sacred concept. This would mean inviting isolation of a significant section of the J & K population, from the solution. And if we are expecting a solution short of the target, inclusiveness rather than isolationism becomes a priority. Due reverence to these concepts is essential for the positive participation of the J & K people in any solution.

The reverence to these concepts does not greatly alter the contents of the solution. The contents will be mainly decided by the ground realities. These concepts have a contextual importance and can be incorporated by accommodating them in the context in which we come up to a solution. The context ideally needs to be an explicit acceptance of the indispensability and decisiveness of the intangible assets in ensuring a solution.

Evolving the Context of the Eclectic Model

The context of the eclectic model is an attempt to provide the settings for the evolution of the contents of the eclectic model. The context is also the mode of incorporation of the relevant, invisible dimensions of the dispute. It is expected to set the objectives of the eclectic model, provide the justification to the contents of the eclectic model and define the constraints within which the model should evolve.

Sentiment

The word sentiment and aspirations have become a byword to define the concept of eternal political salvation for the people of J & K. Sentiment embodies the concept of right to self determination and the aspirations for an Independent homeland. The average psyche in J & K is obsessed with a sentiment wherein the political aspirations are not in consonance with their present political arrangement. The mindset seems to be conditioned to refuse the finality of the present political arrangement.

Variance in Sentiment

Sentiment is not a unanimous concept in J & K. There is a variance. The majority sentiment in J & K is for an independent homeland. Adherents of ideology of accession to Pakistan and accession to India represent the minority strands of the sentiment.

Reference Point – Independent Homeland

Despite the apparent lack of scope for the realization of the majority sentiment, it is essential to explicitly state the prevalent majority sentiment of independent homeland. The majority sentiment should be the reference point for the solution. If we want to cater to the sentiment partly or wholly, acknowledging the majority sentiment and reflecting the variance in the sentiment would be a part of the process. It is important to understand that the success of the solution lies not only in solution reflecting the majority sentiment but also how explicitly the solution is perceived as reflecting the majority sentiment.

Process of Accommodation

The process of accommodation acknowledges the existence of conflicting aspirations, and attempts to reconcile the conflicting aspirations. An optimal process of accommodation entails the evolution of a model based on accommodation of claims in proportion to the variance in the sentiment. This would mean making the majority sentiment i.e. the independent homeland as the reference point and diluting it by accommodating the Indian and Pakistani sentiment. The process of accommodation would not alter the current territorial dynamics. **This is a departure from the concept of "democratic determination by majority" to a concept of "accommodation, in accordance with the variance in sentiment".**

Sanctity of Sacrifices

In pursuit of the realization of the sentiment, the people of J & K have used political and non political methods spanning the last five decades. The last two decades have been particularly violent and have been witness to a bloody armed conflict which consumed thousands and thousands of lives. These sacrifices are sacred for the people of the state of J &K. The average societal perception of the solution is going to be through the prism of sacrifices. Although it is difficult to apply a typical cost benefit analysis to human lives, some sort of cost benefit analysis will take place in the minds of the people of J&K. More important evaluation taking place will be the role of sacrifices in ensuring a resolution.

Both India and Pakistan should accept that the sacrifices rendered by the people of Kashmir has institutionalized into a revered and sacred entity. This institution has to be incorporated into the model. Ignoring sacrifices would be tantamount to facilitating failure. The scale of sacrifices is the most profound psychological impediment for a movement towards flexibility. People of J & K are psychologically captive to the sanctity of the sacrifices.

Incorporating the variable of sacrifices in the resolution process would mean showing desired reverence to sacrifices in words and in deeds. Till date there has been no formal expression of remorse or regret for the fatalities in the conflict. The sacrifices need to be acknowledged. Reverence for sacrifices would further mean ensuring institutional involvement of the people of J & K in the peace process, accepting the variance in the sentiment, allowing the real leadership of the people of J&K to advocate the case of the people of J & K. Both the states would have to exhibit moral courage by accepting the role played by sacrifices in exerting pressure on all the parties to resolve the dispute. If we attribute the gains made in the peace process to the statesmanship of Indian and Pakistani leadership for statesmanship, it is equally important to attribute proportionate, significant importance to the role that sacrifices have played in convincing all the parties for the need to resolve the dispute. If the contents of the solution are perceived partly as derivatives of the sentiment, the resolution process in itself should be perceived as being partly a derivative of the sacrifices.

Psychology of Nomenclature

In presenting solutions for resolution of the conflict in J & K we would have to ensure that apart from the contents, other factors including the nomenclature used is

compatible with the psychological realities. Power sharing structures presented in the form of a solution with a nomenclature, which has been in circulation in the pre 1989 era poses grave psychological problems. A concept of a solution in circulation in the pre-1989 era lacks identification with the sacrifices which where mainly rendered in the post 1989-era. Irrespective of the merits or the demerits of the contents of any proposal it is prudent to avoid reintroduction of nomenclature in circulation in the pre 1989 era. The resolution process has to be perceived as a derivative of sacrifices and a "set of nomenclature and solution" predating the era of sacrifices, makes sacrifices irrelevant. The people of J & K should be able to correlate the pain and suffering with a change, a sense of achievement. This entails sensitivity to the psychological dimensions of nomenclature.

Psychology of Evolution and Devolution

The direction that the process of accommodation takes place acquires importance. Devolving power from New Delhi to Srinagar or from Islamabad to Muzzafarbad may be a desirable prospect per se, but it lacks comprehension of the psychology of the J&K conflict. The reference point will assume importance in any process of accommodation leading to a solution. Making independent homeland a reference point and evolving a model or a solution by a process of accommodation would have a different psychological impact, compared to a model or a solution arrived at, by typically devolving powers from central government to the provincial government.

Involving Armed Groups

Violence in J & K is one of the biggest problems that any peace maker would have to confront. The pattern of violence has undergone a change. While the militant is largely invisible, militancy is very visible and makes its presence felt at frequent intervals. Violence will play a role in the acceptability of any solution. A few high profile incidents of violence are enough to kill a process or render a solution redundant. Presence of violence in itself is symbolic of failure to resolve the issue. Although violence can by no means be termed as expression of a representative opinion, violence can still draw on the sanctity and goodwill of the past and symbolize failure. It has the capacity to deliver physically and psychologically.

Violence has to be sincerely factored into the model. Violence has no single control and it is difficult to assess the range of controls and evaluate their intentions. Control over violence may have spilled over from the visible entities to various invisible entities. Stopping violence may not be as easy as starting it. Elements

involved in violence are no longer confined to the patronage of the two states and there are a host of independent actors. While most of the actors still have political objectives, we cannot rule out the presence of violent actors whose objectives are not necessarily political and subject to resolution.

The ethnic Kashmiri non state armed groups need to be engaged in the resolution process. They are vital stakeholders in the conflict and have an important role in ensuring that violence is not an impediment to a solution. It is the responsibility of the Indian state to set the stage for an inclusive dialogue involving the non state armed groups. While the Indian state would have to convince the non state armed groups of its sincerity in finding a negotiated settlement, the non state armed groups would have to reciprocate and give unambiguous indications of adherence to political and negotiated means of settlement.

The Indian state has to come across as a party desirous of peace and resolution. The perception that the Indian state negotiates only when the going is tough i.e. when there is violence on the ground has to be changed. The state of India should be seen as reacting to aspirations not violence. This makes the position of the pro dialogue sections within the armed groups stronger and provides greater incentives for a negotiated settlement.

Social Stigmatization of Violence- Post Solution

Any remnants of violence post solution constitute the independent actors whose objectives could be ambiguous. India and Pakistan do have an important institutional role in physically stopping violence but the most important role post solution is for the people of J & K i.e. a structural response to violence. Unless concept of violence is not socially stigmatized in J & K, complete cessation of violence is an improbability. Violence can be countered by facilitating the people of J & K in stigmatizing the concept of violence. Social stigmatization renders the concept of violence irrelevant as it implicitly implies the withdrawal of the social sanctity accorded to it. It no longer keeps the resolution process hostage to independent violent actors. Any violence post social stigmatization would be clubbed with criminal activities and have no scope of undermining the solution. The concept of "social stigmatization post solution" needs to be comprehended by the non state armed groups. They would have to understand that eventually any solution would have to be endorsed by the society from which they derive their sanctity. Gun cannot be a permanent inclusion either in the negotiation process or in the J & K society.

However, social stigmatization of violence can only take place if significant sections of the people of J & K feel that the solution represents an optimal level of deliverance. Desired levels of reflection of sentiment and sacrifices in an honourable solution are intricately linked to the concept of the social stigmatization of violence.

Generating Consensus among the Peoples

The stated positions of all the parties are as old as the dispute and decades of rabblerousing have made the stated positions an inherent part of the political thought. Although over the past few years inclinations of flexibility have been explicitly espoused, none of the parties has tried to prepare their respective peoples for a solution well short of the target. The most daunting task of preparing their peoples will be for the J & K leadership. India and Pakistan too will have a tough task to market a compromise after decades of hostility and explicit show of obsession for J&K.

All the parties to the dispute have to reconcile to the fact that the eternal state of conflict is not sustainable. And to resolve conflict, it is important to take on board significant sections of the peoples of the three parties. It is imperative to create an environment wherein pressures for solution are felt internally. It is the internal pressures rather than the external pressures which will ultimately make a solution viable or unviable. Malicious state propaganda aimed at marketing demonic versions of the rivals will have to make way for benign versions in consonance with the reconciliatory objectives. It is essential that the peoples of the three parties to the dispute are inspired by their respective leaderships to subscribe to change and explicitly exhibit the desired disdain and contempt to the concept of being eternally handcuffed to emotions of revenge. The leadership of J & K will in particular have to understand that they will have to do the maximum explaining in the event of a solution, which is short of target. And given that J & K is the place which has witnessed a lot of pain; it is the J & K leadership which will have to convince the people of J & K about the desirability of any solution. Rabblerousing and continued espousal of the unachievable will only make the process painful. The leadership would have to understand that stretching ideological positions beyond achievable limits to gain short term benefits makes realistic reconciliation proportionately painful and lengthy.

Divided J & K Leadership

The fractured leadership in J & K is a problem. Irrespective of the difference of opinion within the various political and bureaucratic institutions, India and Pakistan are able to come across as nations with a unanimous point of view. The political leadership in J & K on the other hand is divided into two main strands and then there are strands within strands. There is also the militant leadership. Indian and Pakistan respectively have their own set of favourites which are not necessarily representing the popular opinion.

The J & K leadership will have to understand that claims for superior roles in the peace making process is only going to undermine the interests of the very nation that they purport to represent. The contents of any solution can have strong J & K inputs only if the contents emanate from a strong source with no ambiguity about credibility of the source. The present state of diffused J & K leadership and public show of differences will only erode or obliterate the J&K clout on the table. The onus of deciding whether the people of J & K should have an ornamental role, consultative role or a decisive role in the solution rests squarely on the ability of the J & K leadership to come up with a consensus on the basic issues. The ethnic Kashmiri non state armed groups will also have to be taken on board.

Evolving a Consensus among Sections of Leadership in J & K

Evolving a broad ideological consensus among the various sections of leadership of J & K would be desirable as it would institutionalize and legitimize the clout of J & K leadership in the negotiation process. Although undeniably desirable, conflicts have a history of leaving behind nations in a fragmented state; sections of leadership consumed with bitterness for each other. It is for the various sections of leadership in J & K to seriously evaluate their present role in the dialogue process or the degree of institutionalization of their roles in the present peace process and the scope for decisive involvement in the future if a consensus continues to evade them. The leadership of J& K has a crucial role in defining achievability and making the distinction between achievability and desirability. Shifting the focus from desirability to achievability needs consensus among the people of J & K, and a consensual leadership is essential to forge a consensus of people.

Identifying Leaders or Developing Leaders in J & K.

India and Pakistan would have to resist the temptation of using their clout to thrust a selected leadership on the people of J & K. In the context of our model we have discussed sanctity of the sacrifices and the need to show due reverence to the sacrifices in the resolution process. Thousands of lives have been lost in pursuit of self determination- a concept which is closely linked to the concept of leadership. People either exercise their choice directly or elect a leader to exercise their choice. If states of India or Pakistan feel that despite the scale of sacrifices they still have the competence to select leaders irrespective of the concurrence of the people, it is a sign of disrespect to those people who sacrificed their lives for the cause. Reverence to the sacrifices in deed, would entail India and Pakistan not impeding covertly or overtly the supremacy of the will of the people in identifying their leaders from J & K. Developing leaders from the state for a proxy representation of their viewpoints would prove detrimental to efforts of peace and solution. They also need to sincerely introspect and understand that development of leaders in J & K by India and Pakistan has been a tradition since 1947 and it has not helped but harmed the interests of peace.

All Inclusive Process

An all inclusive process representing all significant and relevant ideological shades of the J & K polity is an imperative variable in the peace process. It is important to accept the reality of multi party nature of politics in J & K. Existence of multi party set up is not unique to J & K. In most of the conflict resolution processes around the world a multi party system existed and inclusiveness has meant involving all the parties relevant to resolution of conflict. It is essential to involve all the strands of political thought in the resolution process.

All inclusive for J & K would mean:

Mainstream parties from the both parts of J & K

Separatist parties from the both parts of J & K

Representation of Kashmiri Pandits

Kashmiri non state armed groups.

The identification of the "all inclusive sections" could either be derived out of a mutual consensus between the sections of leadership in J & K

or

an institutional and procedural mechanism to identify the "all inclusive sections"

or

Emulation of the concept of election to dialogue forum for negotiations adopted in the Good Friday Agreement. This would mean elections to elect leaders from J & K for participation in the dialogue process. In Northern Ireland the structure of the elections was liberal to ensure maximum inclusiveness. The contours of a possible solution would have to be explicitly defined. There would be a propensity to resort to advocacy of the unachievable in order to gain admission to a forum meant to debate achievability. This makes the implementation process particularly painful.

Inclusiveness of some degree is needed even in the states of India and Pakistan. Peace processes are a continuous phenomenon and cannot be confined to the ruling party either in the state of Pakistan or India. The opposition parties in both India and Pakistan need to be explicitly brought on board in the peace process. Although there must be an institutional mechanism in place in both the states to involve the opposition on matters pertaining to resolution of conflicts, a more transparent system is needed.

Aligning the Current Peace Process

The current peace process between India and Pakistan is exclusively confined to the external dimension of the dispute. Two parties to the dispute are involved in a process of dialogue and negotiations and the third party i.e. people of J & K, has been formally excluded so far. Bilateralism has neither worked in the past nor is it going to work now. The internal dimension pertaining to the claims of the people of J & K is unrepresented. The fate of the CBM's should serve as a reminder that exclusivity is unlikely to facilitate resolution and establishment of peace. Alignment of the internal and the external dimension of the dispute is an imperative if the current peace process has to succeed. This would mean a formal mode of involvement of the people of J&K- an involvement that is decisive and also imparts the much needed political, social and moral legitimacy onto the peace process.

An attitudinal and behavioural shift is essential for the states of India and Pakistan-long held beliefs in the power of bilateralism and their competence to represent the J&K viewpoint needs to be substituted with the realities of exclusive competence of the people of J & K to represent their viewpoint and divergence of objectives and thereby need for going beyond bilateralism.

Institutionalization of the Dialogue Process

A dialogue with various political parties in J & K has been initiated by the states of India and Pakistan. But the dialogue, unlike the dialogue between the states of India and Pakistan is not institutionalized. The right to select a political party which they feel may be representative to some degree lies with the states of India and Pakistan. It is the sole prerogative of these states whether to carry on the dialogue further or not or when to carry further the dialogue. This has created an impression of the involvement of the people of J & K in the dialogue process. The reality is that some political parties have been involved in an unstructured dialogue and the criteria for involvement is decided by India and Pakistan. An institutionalized dialogue process would mean:

1) **Identification of an optimal "all inclusive" representation from J&KM and J & K S.**

2) **A structured process of dialogue between J & K S and India.**

3) **A structured process of dialogue between J & K S and Pakistan.**

4) **A structured process of dialogue between J & K M and India.**

5) **A structured process of dialogue between J & K M and Pakistan.**

6) **A structured process of dialogue between J & K M and J & K S.**

Concept of Consent

The concept of consent is absent in the current peace process. The concept of consent and related concepts pertaining to optimal consensus defined in the context of conflict resolution in the Good Friday Agreement is worth emulating. Concurrent consent, sufficient consensus, proximity talks, parity of esteem and parallel consent provide a refreshing alternative to the concept of majority consent. These concepts have been defined in detail in the chapter on empirical evidence. The credibility and

ultimate legitimacy of the peace process or any future movement towards solution is rooted in the concept of consent.

Institutional Dichotomy

The exterior monolithic structures of the states of India and Pakistan comprise of individuals, political institutions, bureaucratic institutions, political parties and a host of other institutions. They rarely agree on all the issues and the show of unanimity is not as unanimous. In the past the institutional dichotomy in decision making of these states and the scope of creating impediments by different arms of the same state has been the cause of failure. Different interest groups within a state and their capacity to impede a solution for a variety of reasons apart from ideological reasons is a part of the problem.

India and Pakistan will have to make a concerted effort to stem the impediments created by the dichotomy within the institutions of the two states. It is important that a broad consensus is created within the various bureaucratic and political institutions in the two states.

Economic Agendas of Conflict

Conflicts across the world generate economic agendas for the various stakeholders in the conflict. Continuation of conflict becomes a stake in itself. The concept of conflict economy, conflict incentives, conflict perks, 'greed and grievance' are all interrelated to the concept of economic agendas of conflicts. The presence of these agendas in conflicts all across the world is an academically accepted fact. Conflict in the state of J & K has created a conflict economy of its own and different interest groups have a vested interest in the continuation of the conflict. Their behaviour in academic terminology would mean "maximizing opportunities to satisfy greed". This would have to be transformed into "maximizing opportunities to resolving conflict." The transformation would need the acceptance of the presence of interests groups with economic agendas across all the parties and corrective measures to ensure that sub agendas of economics within the main agenda of peace and resolution do not assume a size bigger than the main agenda of peace and resolution.

Opt out Option- Ethnic Accommodation

We have used the term ethnic and not regional. Regions in J & K are not ethnically homogenous entities. The concept of regional aspirations that have begun to emerge,

are basically the ethnic aspirations of the majority group in a particular region. Accommodating the aspirations of an ethnic group and mistaking it for regional aspirations would be the beginning of a new conflict, created by not catering to the aspirations of the other ethnic minorities in that region. Although no administrative unit could be homogenous, we would have to look at a practical way of identifying the highest degrees of ethnic homogeneity in the current administrative division system. A district would have a higher degree of homogeneity compared to a region. A Tehsil or block or Halqa would have higher degrees of ethnic homogeneity compared to a district. It is not practically possible to cater to ethnic aspirations at the smallest level of administrative division. A district could be a viable option to cater to ethnic aspirations subject to practical considerations i.e. geographical links would have to be taken into account.

Two options could be made available:

Opt out: Every district would have the option of opting out of the arrangement i.e. districts where a majority of the people feel that their rights are better protected by not being a part of J & K should be allowed to opt out. A mechanism would have to be worked out to ascertain the views of the people of those districts, without any threat or coercion. It is important that ethnic communities wanting to part do so in a state of civility. Rather than wait for the relations to deteriorate it is better to exhibit accommodative spirit. If some ethnic groups are destined to part, erecting impediments will only make the parting painful. A district marooned at the end of a region with no link to J & K as a result of other districts opting out would have to be a part of the opting out entity. Similarly a district landlocked between other districts who want to be a part of J & K would have to continue to be a part of J & K.

Voices emanating from districts Jammu, Kathua and Ladkah would suggest the utilization of the "opt out option". Similarly Northern Areas in J & K M has already been separated and carved into a distinct entity by the state of Pakistan and exists as a separate entity since 1949. The separation could be legally endorsed by ascertaining the views of the people of the Northern Areas.

Devolution of Power: The districts could be empowered with administrative autonomy, so they enjoy a higher degree of power in decision making process. This would mean devolving more power to the districts. The ethnic groups would have to make the choice of either accepting more power in a new devolved system or still exercise the option of opting out of the union of J & K.

Human Rights

Human rights violations continue to remain a cause of concern in J & K S. It is most visible index of the moral costs being incurred by allowing an unresolved state of affairs to continue, not in consonance with the majority sentiment prevalent in J & K. Apart from the moral dimensions, violations of human rights also put pressures on the moderate sections of political thought in J & K, who espouse dialogue as the mode of resolving the conflict. Persistence of these violations is perhaps one of the main causes of the failure of the peace process to percolate down to the ground. Daily doses of hostility injected by human rights violations impede the resolution process and act as barriers to identification of the people of J & K S with the peace process. Human rights violations have become a bigger part of the problem and have assumed bigger dimensions than the dispute itself.

Presence of human rights violations in a region overwhelmed by conflict over the last seventeen years- leaving thousands dead, thousands imprisoned and thousands imprisoned is certainly not debatable. The state of India is yet to exhaust all its resources to ensure respect of human rights in J & K S. There is a lot of room to improve the condition of human rights in J & K S. The existing measures taken by the state of India are unlikely to mark any improvement in the human rights condition and the state of perceived impunity for the violators of human rights is likely to continue. There is a pressing need to set up a joint institution comprising of civil society actors from the state of India and J&KS. The joint institution needs to be visible, transparent entity and operational all through the week, round the year. This institution could be complemented by the setting up of Human rights cells at the village level. Arrest, release or military action in the villages would have to be monitored by the human rights cells at the village level and any aberrations would have to be reported to the joint institution. The joint institution would be a nodal centre for collecting information on human right violations and legally empowered with instant punitive powers in order for it to be a significant deterrent in human rights violations.

Impunity and punitive are the key words which assume importance in attempts to ensure respect of human rights. The government human rights organizations in J & K S have no punitive powers and the human rights violators seem to be able to operate in a state of impunity. Unless punitive power is not localized and instant, and unless the human rights violators do not face the threat of instant, punitive actions, it is very unlikely that human rights violations would stop in J & K S.

There is an immediate need to repeal the series of laws, giving unchecked power to the security forces. Orders for arrest, military action, release need to be reverted to the civilian authorities in practice. Some of the measures may already have been implemented in theory but they need to be implemented in practice. There is a big gap between theory and practice in J & K S. Human rights in J & K S would have to be to the satisfaction of the people of J & K S, whose human rights are being violated and not to the satisfaction of the Indian state, which is violating the human rights.

A certain amount of de politicization of the concept of human rights is also needed. It would be in the interest of human rights if we resist the temptation of converting the concept of human rights into a purely political concept. Political contextualizing of the concept of human rights has not helped mitigate the sufferings. There is a need to encourage the Indian state to respect human rights. Making human rights a part of the political blame game puts excessive focus on the political dimensions at the cost of the human dimension.

The armed groups would also have to ensure that they do not violate the human rights of the people of J & K or civilians of any ethnic stock. They need to understand that the concept of social sanctity accorded to them is not for use of force against non combatants.

Truth and Reconciliation Commission

A setting up of a truth and reconciliation commission would go a long way in helping restore the social equilibrium of the society in J & K and achieve a balance between "vengeance and reconciliation". The objectives of the truth and reconciliation commission should not be punishment but a process of "reconciliation and remorse". It would be a platform for the victims or the heirs of the victims to come forward and give their account of atrocities or murders. The perpetrators would also be summoned with the objective of encouraging feelings of remorse. An investigative team would have the mandate to take testimonies, corroborate evidence and document human rights abuses. The Commission would have to be facilitated by the states of India and Pakistan. The Truth Commission would have a multidimensional objective of deterrence for repeating such acts in future, reconciliation, remorse, and confirm or contest distorted versions of human rights violations and make recommendations of structural reforms. This is basically a post solution concept but a movement towards establishment of a truth and reconciliation commission is bound to start the erosion of the prevailing state of impunity.

Return of Displaced Persons

The conflict has seen the migration of people from J & K S in 1989. There has been a large scale migration of the Pandit community, and they are currently living in abysmal conditions in different parts of India. Similarly a large number of people have migrated to Pakistan at the outset of the conflict in 1989. Dignified and secure return of the displaced person should be a priority. This would succeed only if it is a joint initiative. Cooperation of the Indian and Pakistani authorities and the J & K leadership is essential to ensure a dignified and secure return of the displaced persons.

Release of Political Prisoners

There are thousands of political prisoners languishing in jails across India and in J & K S. Release of the prisoners is essential in the spirit of negotiations and dialogue. This would mean that anyone facing charges related to the J & K conflict would have to be released and cases withdrawn except persons who are accused of having committed serious violations of international humanitarian law.

Status of Ex-Militants

The failure of the Indian state or the political and social organizations in J & K S to facilitate the dignified re-integration of the ex militants in to the society is hardly an impetus for others to follow a non-violent approach. The state approach is to either coerce or convince the ex militant to aid overtly or covertly counter insurgency operations of the Indian military apparatus. The other option is the psychological torture of forcing them to come for daily or weekly attendance at the local military camps. No security clearance for a government job or even for issuance of a passport is given to an ex militant. There might be some exceptions but this is the unwritten rule.

The status of the ex-militants is unenviable. Thousands who were coerced to work for the military apparatus were killed by ex comrades. Those who survived have no definite source of income. Their youth has been spent either fighting for the nation or in jail. While the Indian state impeded their reintegration on release from jail, the host of political and social organizations who advocated their cause in the past or at present are mute spectators to the plight of these ex militants. The society, the politicians have all failed the ex-militants. There is an urgent need to evolve a rehabilitation and reintegration plan for thousands of ex militants. The sincerity in proposals for peace

lies partly in exhibiting the desired will to facilitate a dignified transformation to non violence as opposed to a transformation that is eternally rooted in humiliation.

Rehabilitation of the Victims of Violence

The conflict has left behind a legacy of pain and suffering. Estimates of the fatalities in the conflict vary between forty thousand to about one hundred thousand. Unanimity is elusive even on the definition of the victims of violence. People who died in the conflict mostly belonged to low income groups and left behind families, most of whom struggle to survive in the most undignified and impoverished conditions. State of India defines victims of violence as those people killed by the armed groups, while state of Pakistan formally recognizes all the people killed as victims of violence but aid is informally sourced to victims killed by the Indian security forces. Providing aid by either of the two countries is bereft of the dimensions of compassion and reconciliation that should have been overtly visible in providing succour to the unfortunate families battling for survival and desperately trying to reconcile with the loss of near and dear ones in the conflict. There is no long-term plan to rehabilitate these families and psychological counselling, show of compassion or any other psychological relief is confined to either monetary payments or government job. The government of J & K S has a scheme whereby the heirs of people killed by militants are provided jobs in the government and paid a compensation of one hundred thousand rupees. But even this compassionate payment does not come easily. The families have to struggle and dole out bribes for their cases to be processed. The case of families killed by security forces is even worse. The mode of aid from Pakistan is informal and very little aid has actually reached the victims. A long-term policy of owning the victims of violence irrespective of the source of violence is needed. We outline some of the steps that could be taken. Apart from the benefits, the feeling of being cared by the society is perhaps more important.

a) A uniform definition of the victim of violence. Irrespective of the source of violence, any person killed as a result of violence should be treated as a victim of violence.

b) Families who have been left out of the rehabilitation schemes because of a different definition of the victim of violence should be provided with the same rehabilitation package.

c) A reservation quota in all jobs in the public sector for the victims of violence.

d) A reservation quota in admissions to all government and private educational institutions for the victims of violence in J & K S.

e) A reservation quota in admissions to all government and private educational institutions in India and Pakistan.

f) Special packages for rehabilitation schemes including small scale industries, handloom sector, cooperative schemes and interest free loans.

g) Other measures could include free travel passes, free medical treatment etc.

Making J & K a Peace Zone- Demilitarization

The most desirable tribute to all those people who lost their lives in the J&K conflict would be to set objectives of making J & K a peace zone – a militarily neutral zone in the long term. This would mean demilitarization of J & K. However demilitarization in a conflict zone is not a unilateral activity but a part of a concurrent activity. It would entail demilitarization in J & K S, J & K M, decommissioning of weapons of the non state armed groups in J & K S and an institutionalized mechanism to monitor both demilitarization and decommissioning.

Demilitarization and decommissioning are not overnight objectives and are linked to progress in the negotiation process, prospects of resolution and are carried out in phases. However the current levels of militarization in civilian areas in J & K S, and constant intervention of the military apparatus in civilian matters and internal policing is undesirable and needs to be instantly rectified.

The objective of a neutral zone in the long term is correlated to demilitarization, decommissioning, and success and pace of the negotiation process. Other important factor is to ensure that different sections of leadership do not politicize the demilitarization issue. Politicization of these rather sensitive concepts only delays the peace process. Northern Ireland is the most recent example where politics surrounding the demilitarization and decommissioning issues delayed the peace process at every stage. A new concept emerging is the concept of "enabling environment". Demilitarization can only be carried out by providing an environment which enables demilitarization. The enabling variables could mean decommissioning, progress in dialogue process and related factors. It is a joint initiative and above all the will and resolve of the respective parties to demilitarize and decommission arms is essential for the concept to be actually realized.

Our concept of a neutral peace zone of J & K in the long term envisages the following phases:

Phase1:

Redeployment of Indian military forces away from civilian areas in the state of J&KS

Decreased visibility of the armed forces in the state of J & K S.

Strict controls on movement of military convoys by the civilian administration. The current style of movement of convoys is a daily problem for the civilians in J&KS.

No role for military or paramilitary organizations in the internal policing of the J&KS.

No interaction between military and civilians.

Ceasefire between the armed groups and the Indian State.

Engagement of the armed groups in all inclusive dialogue process.

Phase 2:

Reverting back of the Indian military forces to barracks to 1989 levels in J&KS.

Continued engagement of armed groups in the all inclusive dialogue process.

Reverting back of military to 1989 levels in J & K M.

Depending on the progress in negotiations the non state armed groups will have to give a timetable for decommissioning of their weapons.

Phase3:

Assuming there is continued progress in the all inclusive dialogue process and an agreement is in sight, two separate commissions will be formed. One will formulate and monitor the demilitarization process while the other will formulate and monitor decommissioning of the weapons of the non state armed groups. The commissions will have representatives from India, Pakistan, J&KS and J & K M.

The Commission on demilitarization will decide on the number of troops in J&KS and J & K M in the short term, medium term and long term, compatible with the objectives of a neutral peace zone. And it would set a time table for withdrawal. The Commission would then monitor the withdrawal and ensure adherence to the numbers that have been mutually decided.

The Commission on decommissioning of weapons of non state armed groups would set a timetable for decommissioning of weapons, monitor the process of decommissioning and certify that decommissioning has taken place.

Evolving the Contents of the Eclectic Model

The context of the eclectic model provides the conditions and the settings under which the contents of the eclectic model are expected to evolve.

The starting point in the evolution process would be the reference point based on the concept of sentiment, variance in sentiment and majority sentiment. The reference point is the independent homeland model. **We will first create an independent homeland model and then dilute the independence of the model by accommodating the Indian and Pakistani claims. The resultant evolved model would be the eclectic model.**

Detailed Conceptualization of the Reference Point Model

The Reference Point Model -The Independent Homeland Model

This model which we maintain could be the optimal emulation of the majority sentiment of the people of J & K is non existent as on date. Realization of the traditional concept of an independent homeland would mean unification of the two parts of J & K as it existed in 1947. India and Pakistan would have to vacate the territory and their armies would have to move out of these areas and that would herald the formation of a new sovereign state.

This is a hypothetical model which we are attempting to build, and defines the broad contours of an Independent homeland for the peoples of the state of Jammu and

Kashmir. These are only broad contours and will not necessarily cover all the micro details of the concept of a state, but will be a macro structure. The model is at best indicative but not exhaustive. The focus will be on the rights and duties of the state which are inherently vested in the peoples of the state. This will be an index of the rights and duties in the event of an independent homeland for J & K.

The concept to build a hypothetical model of an independent state of Jammu and Kashmir is based on the theoretical perspectives of International law. Although the definition of a state in international law is not fixed or unanimous, qualifications of a state, duties and rights of a state as per international law do to a certain extent constitute the definition of a state. **This model is aimed at the conceptual transformation of the sentiment- an abstract concept, a measure of aspirations into a legally legible and valid document, in conformity with the international law.**

We presume that J & K becomes a fully sovereign state and possesses totality of rights and duties in accordance with the international law. India and Pakistan accept and facilitate the new international state and along with other union of states recognize J & K as a sovereign state. For purposes of analysis and usability the concept has been sub defined under four sections, which together constitute our independent homeland model.

Internal Aspect

External Aspect

Economic Aspect

Defence and Security Aspect

Internal Aspect of the Independent Homeland Model

The population of J & K, which would mean an aggregate of the peoples of all the regions of J & K as it existed in 1947 would be 14.209 million at latest estimates.

The territory of J & K would mean provinces of Ladakh, Jammu and Kashmir as they existed in 1947. This would mean a total area of 222,236 square kilometers.

J & K would be a sovereign state which is as a rule a single state in which one single political authority viz. the government represents the state internally and

externally. The government would have complete internal independence to deal with internal affairs and external independence to deal with external affairs.

J & K would have the right to independence and hence exercise freely without dictation by another state, all its legal powers, including the choice to form its own government.

The government would be a democratically elected government and would be the institution to govern the territory defined above and the population defined above.

The government would be in accordance with the constitution of J & K and the constitution would have no linkage with any country but would be in conformity to international law.

The government would be in conformity with the international laws pertaining to states and its legality would be uncontested in international law.

J & K would have full freedom to establish its social and cultural, law and order in accordance with the will of the people without outside interference, coercion or threat in any form whatsoever.

J & K would have an independent election commission to conduct elections to law making institutions.

Contestants to the elections would have to take an oath of allegiance towards the constitution of J & K.

J & K would have a separate flag.

J & K would have the right to exercise jurisdiction over its territory and over all persons and things therein, subject to the immunities recognized by international law.

J & K would abide by its duty to respect human rights and fundamental freedoms in accordance with international law.

External Aspect of the Independent Homeland Model

The J & K state would have the right and the capacity to enter into relationships with other states and have complete independence to deal with its external affairs.

J & K state would have the right to subscribe to the political thought of the United Nations and be a member of the United Nations and represent itself in this forum of states, without any dictation or coercion from any other state.

J & K would have the right to equality in law with every state.

J & K would have right to frame its own foreign policy in accordance with international law and duty bound to conduct them in accordance with international law and with the principle that the sovereignty of each state is subject to the supremacy of international law.

J & K would have the right to be a part of union of some states as a part of military, economic or regional alliance.

The state of the J & K would have the right to establish its diplomatic missions in other states and facilitate other states to establish diplomatic missions in its territory.

J & K would have the sole right to allow or deny entry to any foreign national.

J & K would abide by its duty to refrain from intervention in the internal or external matters of any state.

J & K would abide by its duty to refrain from fomenting civil strife in the territory of another state, and to prevent any organization within its territory of activities to foment civil strife.

J & K would abide by its duty to ensure that conditions prevailing in its territory are not a menace to world peace.

J & K would abide by its duty to settle disputes with other states by peaceful means, in such a manner that international peace and security and justice are not endangered.

The state of the J & K would abide by its duty to refrain from resorting to war as an act of instrument of national policy, and to refrain from threat or use of force against the territorial integrity or political independence of another state, or in any manner inconsistent with international law and order.

J & K would abide by its duty to refrain from giving assistance to any state which is in violation of duty to refrain from resorting to war, or against which United Nations is taking preventive or enforcement action.

J & K would abide by its duty to refrain from recognizing the territorial acquisition by another state in violation of the legal requirement that a state cannot acquire the territory of another state by resorting to war.

J & K would abide by its duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it would not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty.

Economic Aspect of the Independent Homeland Model

J & K would have the right to choose its economic system in accordance with the will of the people without outside interference, coercion or threat in any form whatsoever.

J & K would exercise full, permanent sovereignty including possession, use and disposal over all its wealth, natural resources and economic activities. The state would abide by international laws and regulations pertaining to sharing of natural resources e.g. river water.

Only the residents of J & K would be able to sell or buy land in J & K, unless the law provided otherwise.

J & K would have permanent sovereignty over foreign investment, nationalization and trans-national corporation.

J & K would have its own currency and have the independence to choose the system of its valuation against the dollar in a fixed exchange rate regime or a free float.

J & K would build its own foreign exchange reserves or gold reserves and be responsible for affording its external trade bills.

J & K would have a central bank of its own which would be the main regulatory, controlling authority as is the case with other states.

J & K would have the independence to formulate its own banking regulations and norms for lending, borrowing and other banking activities.

J & K would have its own set of corporate laws to deal with internal corporate behaviour. This would include the entire range of laws including company law, import laws, labour laws, export laws, accountancy laws etc.

J & K would have complete independence to impose taxes locally on commercial activity, income tax, tariffs on imports etc.

J & K would have its own laws pertaining to patents, monopolies, intellectual rights in accordance with the prevailing international laws.

J & K would have the right to engage in international trade and other forms of economic cooperation irrespective of any differences in political, economic and social system, and would not face any discrimination of any kind based solely on such differences.

J & K would have the right to associate in organizations of primary commodity producers in order to develop its national economy.

J & K would have the right to be a part of any economic union of states with the aim of maximizing the net economic welfare of its population.

J & K would have the right to participate fully and effectively in the international decision making process in the solution of world economic, financial and monetary problems, and to share equitably in the benefits resulting there from.

J & K would have the right to be a member of the WTO and other international economic institutions.

Being a landlocked state, J & K would have the right to sign treaties for usage of ports with either China or India or Pakistan or all of them, for commercial movement of goods by sea. Concurrent usage of ports of all the three states would be subject to interests and approvals of the three states.

Defence and Security Aspect of the Independent Homeland Model

J & K would have the right to individual or collective self defence against an armed attack. The state would have the independence to raise an army for purposes of self defence. The objectives of the army would be in accordance with the international laws and would be available for peace keeping duties of the United Nations.

J & K would have the right to raise an air force for purposes of self defence.

J & K would have the right raise a force specially to secure borders in view of a contiguous border with three countries.

J & K would have the right to secure its airspace in accordance with the international law.

The Process of Accommodation, and the Dynamics of an Overlap

Defining an Overlap

We have created a model of an independent homeland, depicting the reference point of our process of accommodation. This we believe would have been an ideal political expression of the majority sentiment. In our model we have to address the Indian claims, the Pakistani claims and the claims of unification pertaining to the two sides of J & K. This will be done by creating overlaps on to the reference point model. **Each overlap would accommodate claims and dilute the independence of the model created above. The cumulative sum of the overlaps would be the contents of the eclectic model.**

The reference point model of an independent homeland is based on the presumption of a unified state of J & K. This is not the case in reality. Creating overlaps on a unified State of J & K would not be possible. **The overlaps will be created separately on the two parts of J & K.**

The Indian claims will be overlapped on to the part of state under its administration i.e. J & K S. While the Pakistani claims will be overlapped on to the part of the state under its administration i.e. J & K M. We will work only on one overlap i.e. Indian overlap onto J & K S. The resulting relationship will be emulated between the state of Pakistan and J & K M.

The next step would be to create overlaps between the two parts of the state. This would be done by exploring sector specific overlaps.

The last step would be creating Pakistani overlap onto the state of J & K S and an Indian overlap onto the state of J & K M.

Defining Indian and Pakistani Claims

It is difficult to confine to a particular posture and assume that a particular posture depicts the real posture of India or Pakistan. **Both India and Pakistan have traditional postures, which are not necessarily the outcomes they desire. India may not state it officially but it would be very comfortable with status quo or changing the present LOC into an international border. Traditionally Pakistan has laid claim for the entire state of J & K, but would be more than content if Kashmir valley becomes a part of Pakistan.** The traditional claims are the bargaining positions and do not necessarily depict the real positions. The real picture on the ground is depicted by the territorial control on the parts of J&K by the state of India and the state of Pakistan. **In our model the extent of accommodation of Indian and Pakistani claims would be a derivative of the sentiment and the territorial control.**

Evaluating the Indian Claim on the Reference Point Model

The sentiment for India is present in some areas of J & K S, but it has the territorial control over the entire territory of J & K S. The main thrust of accommodation of the Indian claims will be in J & K S. **The extent of the Indian accommodation in J & K S would mainly be defined by the territorial control.**

Evaluating the Pakistani Claim on the Reference point Model

The sentiment for Pakistan is spread across both the parts of J & K i.e. J&KS and J&KM, but its territorial control is limited to J & K M. The main thrust of the accommodation will have to be in J & K M. **Sole reliance on sentiment would have seen a relatively higher degree of accommodation of the Pakistani claims in J&KS. But the lack of territorial control constrains the extent of accommodation.**

Evaluating the J&K Claim on the Reference Point Model

The sentiment across both the parts of J & K for an independent homeland is very high. It is the majority sentiment, but it lacks territorial control over either of the two

parts of the state of J & K. **Sentiment will be the main source of accommodation and full realization is constrained due to lack of territorial control.**

Creating the Indian Overlap

An Indian overlap indexed against the sentiment is unlikely to significantly impact the reference point model. The main impact of the overlap will be however derived from the territorial control of the state of India on a part of J&K. **Ideally, territorial control of J & K should have been a derivative of the majority sentiment prevalent in J & K. This is not the case in practice and there is a mismatch between territorial control and sentiment. State of India is averse to ideal rectification of the mismatch between the sentiment and the territorial control.** Accommodation of the Indian set of claims constitutes a process of optimal rectification and is based on ground realities.

Structuring the Indian Overlap

The reference point model has been laid out in four sub sections. We will attempt to evaluate the overlap on each aspect separately. A cumulative overlap could then be assessed.

The Internal Aspect

The internal political arrangement between New Delhi and Srinagar is the most visible political dimension of the Kashmir issue or putting it more appropriately the problem. The current state of the relationship is in itself a witness to the chronologically calibrated erosion of the independence of the political arrangement. A simple comparative analysis of the levels of independence of the government of J&KS in 1947 and in 2006 can be an indicator of the extent of erosion of powers of the government of J & K S. There has been a massive, involuntary remission of powers from Srinagar to New Delhi. Keeping the relationship unchanged could have acquired or struck the requisite political equilibrium, kept political discontent at insignificant levels and averted violent espousal. The present set of political arrangement with India has utterly failed to inspire the people of J & K to accept the current relationship and has instead fomented political discontent and pushed it into a state of violent espousal. Changes in the relationship are bound to have the most profound impact.

Mapping the Indian Overlap (Internal Aspect)

The result of the Indian overlap onto the internal aspect of the independent homeland model is:

The state of India and the state of J & K S would have a system of shared sovereignty. The state of J & K S would be vested with executive, legislative and independent judicial powers including final adjudication and full economic sovereignty.

The government of J & K S would be a single political authority on all matters pertaining to the internal matters of the state. The government would have complete internal independence to deal with its internal affairs.

J & K S would have the right to internal independence and would hence exercise freely without any sort of interference from India, all its legal powers.

Internal affairs or internal matters of the state of J & K S would mean all areas or subjects other than economics, defence and foreign affairs. Economics is treated as a separate subject in this model.

Indian laws would not be applicable on matters pertaining to the internal affairs of the state of J & K S.

J & K S would have the right to exercise jurisdiction over its territory and over all persons and things therein, subject to the immunities recognized by international law.

The government of J & K S would be in accordance to the constitution of J&KS and have a diluted linkage with the state of India. The state of J & K S would have a separate constitution. A new constitution compatible with the new system would have to be drafted and approved by the people of the state of J & K S. The state of J & K S would have its own system of laws in accordance with the constitution and have a separate flag and a national anthem.

The government of J & K S would be a democratically elected government, duly elected by the people of J & K S.

The democratically elected government would be the institution to govern the territory, the people and deal with the state of India.

The Government, executive and legislature of the state of J & K S would be comprised of its citizens. The legislature would be elected by the people and the executive and the head of council of ministers would be elected by the legislature. The executive authorities would abide by law and would be accountable to the legislature.

The legislative power of the state of J & K S would be vested in the legislature of the state of J & K S. The legislature could on its own authority enact and amend laws in accordance with the provisions of the constitution.

Judicial power in the state of J & K S would be vested in the courts of the state of J&KS. The courts would exercise judicial power independently and free from any interference. Members of the judiciary would be free from legal action in respect of their judicial functions. The courts would decide cases in accordance with the laws of the state of J & K S.

Judges of the state of J & K S would be appointed by the head of the Executive on the recommendations of an Independent legal commission. Judges would be chosen by reference to their judicial qualities and could be recruited from other common law jurisdictions.

The power of final judgement of the state of J & K S would be vested in the highest court of the state of J & K S.

J & K S would have an independent election commission to supervise, direct and control the elections in the state of J & K S.

Contestants to elections would be required to take an oath of allegiance towards the J & K S constitution.

The state of J & K S would employ residents of J & K S only; to serve as public servants at all levels. This would mean that non resident public servants previously serving in the state of J & K S in all government departments would not remain in employment.

The state of J & K S could by special permission recruit non residents including foreign nationals as advisers to different departments in the government. The purpose would solely be to achieve excellence in particular fields where foreign expertise is desirable.

The maintenance of public order and internal policing would be the responsibility of the state of J & K S. The military forces or the paramilitary forces of the state of India in the state of J & K S would be specifically for the purpose of defence and would have no role or right to interference in the internal affairs of the government of the state of J & K S.

The state of J & K S would protect the rights of freedom of the inhabitants and other persons in the state of J & K S according to law.

J & K S will have full freedom to establish its social, cultural, educational, linguistic systems, and maintain law order in accordance with the will of the people without any interference direct or indirect from the state of India.

J & K S would abide by its duty to respect human rights and fundamental rights in accordance with international law.

The current state subject holders or persons qualifying for issuance of state subject would be the permanent residents of the state of J & K S.

Indian citizens would continue to have right to unrestricted travel in the state of J&KS.

The External Aspect

J & K has not been able to conduct its external relations with other states since 1947. The external aspects were visible in the pre 1947 era. After 1947, both the sides of J & K never got a chance to enter into relationships with other states and formulate its own foreign policy. For all purposes the foreign policies of India and Pakistan have been binding for the two parts of J & K respectively. The leaders of J & K from both the parts have interacted with the diplomatic community. But the interaction has been mostly informal and any formal interaction has been either as a part of Indian delegation or Pakistani delegation. No formal J & K interaction has taken place.

The independence in external aspect is important as it is the source of international personality of a state. Capacity to enter into relationships with other states constitutes the basic definition of a state. This is the aspect where the reference point model will undergo the maximum dilution. The state of J&KS would not have the right to pursue its own foreign policy and enter into independent relationships with other states. However, in the process of accommodating the Indian claims we have to ensure that there is enough room to conduct independent relations with the state of Pakistan and

J&KM. There are some other facets pertaining to external economic relations and other sector-specific cooperation where some dimensions of an international interaction for J & K S are achievable.

Mapping the Indian Overlap (External Aspect)

The result of the Indian overlap onto the external aspect of the independent homeland model is

Foreign affairs would be the sovereign responsibility of the state of India.

Subject to the principle that foreign affairs are the responsibility of the state of India, representatives of the state of J & K S could participate, as members of the delegation of the government of India, in negotiations at diplomatic level directly affecting the state of J & K S. The state of J & K S could maintain and develop relations and conclude and implement agreements with states, regions and relevant international organizations in the appropriate fields, including economic trade, communications, services, tourism, cultural, educational exchanges, scientific cooperation, sporting activities, etc. - provided that such agreements do not cause prejudice to the authority of Indian Government and is compatible with the new state of affairs. In the new state of affairs, J & K S may depute representatives to engage in relations with these states, regions and relevant international organizations and conclude and implement agreements on these issues. The Indian government would facilitate these activities since the deputed representatives of J & K S would be accredited as part of the diplomatic missions of India. These activities would be reported to the Indian state for reference.

Foreign Consular and other official and semi official missions may be established in the state of J & K S with the approval of the state of India. States not recognized by the state of India could establish non governmental institutions.

The residents of the state of J & K S would travel abroad on special passports issued by the Indian government. These special passports issued to the residents of the state of J & K S would bear certain visible insignia indicating the special category of the passports. The special passports would assign all the rights and responsibilities to the holder as holders of the regular Indian passport possess. The special passports could also offer the holder other rights such as visa-free entrance into states that may choose to offer such gestures. The state of India would only be the issuing authority. Recommendation for issuance would have to come from the state of J & K S.

The power to issue or deny visas to foreign nationals would rest with the Indian government. Concerning the issuance of visas to foreign nationals who seek to visit J&KS as tourists or seek to work, reside, study, teach, research, attend conferences, function as media, etc. in J & K S, such foreign nationals would be required to apply for visas through the proper channels at the embassies of India. A foreign national issued a tourist visa would have the right to visit J & K S accordingly. In the new state of affairs, some cases would have to be referred to the state of J & K S for approval and a corresponding mechanism would have to be worked out. The issuing of those categories of visas that facilitate non-tourist activities conferring special activities, rights, privileges and/or responsibilities to foreign nationals in J & K S would be one such case where approval would be required. The state of J & K S could require the Indian government to issue special category visas valid only for J&KS, in those cases where the Indian government regards a foreign national ineligible for a regular Indian visa. The state of J & K S could also refuse any foreign national the right to entry in J&KS if he or she poses a threat to the interests of J & K S. The Indian government would not be allowed to stop persons of J & K origin (PJKO) from visiting J & K S. A visa-free regime and the exercise of other rights and privileges in J & K S would be granted to such persons of J & K origin (PJKO).

In the new state of affairs, subject to the principle that foreign affairs are the responsibility of the state of India, the state of J & K S will have the right to engage on its own with the state of Pakistan and the state of J & K M within the parameters of the respectively "defined relationships".

The Economic Aspect

The economic aspect of the reference model provides immense scope to compensate the dilution of the independence of the government of the state f J&KS in the process of accommodating the Indian overlap, in other aspects. Although economics has not been a visible part of the problem, an independent economic system does have the potential of being an essential tool of the solution. The role of economics becomes even more relevant in the post solution period. In a situation where the solution is well short of the espoused political target, economics could facilitate politics or make up for the loss of politics. The power of a solution exclusively rooted in politics, to sustain a solution, short of the target is limited. Economics or economic prosperity in this conflict ridden region could have the power to sustain a solution in the long-term. An independent economic system designed specifically to take advantage of a strategic location and privileged accessibility into

two big protected economies could unleash the power of economics in this region. The reach of economic is much wider and solution driven good economics is bound to broaden and strengthen the stakes for sustainability of any solution. Apart from the economic prospects, an independent economic system is a political statement in itself. It is a perfect backdrop for the reconciliation of political realities and balances the movements away from the reference point model of independent homeland, made while accommodating the Indian overlap in other sectors. It has inherent in itself the psychology of independence even if confined to a particular sector.

The eclectic model envisages complete economic sovereignty for the government of J & K S. For purposes of an economic system, J & K S would be an independent entity. However the overall relationship will encumber some sort of linkage with the state of India. Traditional economic theory would suggest that a separate currency for a small geographical and commercial area is unlikely to enhance the economic welfare of the inhabitants of J & K S. This would mean continuation of the Indian currency as a legal tender. The present format of the state of India financing the expenses of J&KS would continue. However there would be changes in methodology owing to an independent economic system and spirit of the solution would mean re negotiation of the quantum of finances.

Mapping the Indian Overlap (Economic Aspect)

The result of the Indian overlap onto the economic aspect of the independent homeland model is:

J & K S would have the right to choose its economic system in accordance with the will of the people without any interference, coercion or threat in any form whatsoever. The state of J & K S would have an independent economic system and would decide its economic and trade policies on its own.

J & K S would exercise full, permanent sovereignty including possession, use and disposal over all its wealth, natural resources and economic activities. The state would abide by international laws and regulations pertaining to sharing of natural resources e.g. water.

J & K S would have its own foreign currency reserves but would not be solely responsible for affording its external bills. A system would be devised with the state of India for affording the external bills i.e. availability of foreign exchange.

The state of J & K S would be a separate customs territory.

The problems pertaining to existence of two separate custom territories with unsecured borders would have to be worked out. Subject to the principle that free travel is not restricted, the India Nepal Trade and Transit Treaty and its subsequent amendments could provide a model for emulation.

The state of India would not have the right to levy any taxes on the state of J&KS. The state of J & K S would have its own system of tax collection. This would mean that the current system of central taxation including income tax, by the state of India in the state of J & K S would cease.

The state of J & K S would deal on its own with financial matters, including disposing of its financial resources and drawing up its budget and its final accounts.

The Central Bank of the state of J & K S would have the independence to formulate its own banking regulations and norms for lending, borrowing, interest rates and other banking activities.

The Indian Rupee would continue to be the legal tender. Indian laws pertaining to the physical outflow of the rupee would apply to the state of J&KS. The state of India would have the discretion to monitor anti smuggling measures being taken by the state of J & K S. (As the model incorporates the relationship between J & K S and J & K M, both Indian and Pakistani currencies would be legal tender in the economic union of J & K.)

The state of India would continue to finance the expenditure of the government of the state of J & K S. A separate agreement would have to be worked out over import financing, availability of foreign exchange, foreign exchange reserves of the state of J&KS and realization of export invoices.

The state of J & K would formulate its own laws pertaining to import, export, corporate rules and all laws pertaining to economic or corporate activity.

Foreign Affairs would be the sovereign responsibility of the state of India. The responsibility would be carried out subject to certain mutually binding conditions. The state of J & K S could carry out some activities in the sphere of foreign affairs in pursuit of economic objectives. These activities would have to be reported to the Indian state for reference.

The state of J & K S would on its own maintain and develop economic and trade relations with all states and regions. The state of J & K S could participate in relevant international organisations and international trade agreements (including preferential trade arrangement), export quotas, tariff preferences and other similar arrangements which might be obtained by the state of J & K S. These arrangements if obtained would be exclusively enjoyed by the state of J&KS. Any such arrangements would be reported to the Indian state for reference.

The state of J & K S could directly source and receive foreign aid, foreign borrowing unless borrowing needs to be underwritten and guaranteed by the state of India. The decision to underwrite or guarantee foreign borrowing by the state of J & K S would solely be the discretion of the state of India.

Goods of J & K S origin would enjoy duty free access into the state of India on non reciprocal basis.

The state of J & K S would have the authority to issue own certificates of origin for products manufactured locally, in accordance with the prevailing rules of origin.

The Defence and Security Aspect

The presence of the Indian army in J & K is seen as the most important determinant of the territorial control of the state of India over J & K S. Starting from the arrival in 1947 to the continued presence and finally the transformation into permanent presence- Indian security apparatus has historically been a visible part of the problem. Initially it was a spill over of the problem of an unresolved Kashmir issue. The last seventeen years has seen the Indian army and other covert and overt security apparatus of the state of India coming out to perform internal security duties on behalf of the state of India. These duties were carried out to put down a violent armed struggle which enjoyed a very high degree of social sanctity among the Kashmiri people. This brought the security apparatus of the state of India into direct confrontation with the people of J & K S. And predictably, typical of any conflict, accusations of mass human rights violations have surfaced. An army within the barracks in the pre conflict era was a symptom of the problem. In the last seventeen years the presence of the Indian army in J & K S has acquired a distinct identity of problem area in the Kashmir issue.

Striking a trade off between the reference point model of an independent homeland and an Indian overlap is perhaps the most difficult. For the Indian side its security

apparatus is an instrument of territorial control and for the people of J & K S it is an impediment to realization of the sentiment and also perpetrator of human rights violations. A way out is to entrust the external defence jointly to J & K S and the state of India. J & K S could specially raise a border force to complement the Indian security apparatus in securing the borders. Terms and conditions for the joint defense could be worked out and the quantum of control that J & K S would be able to exercise over the Indian security apparatus would also need to be worked out. It is essential that there be no ambivalence over the defensive role of the Indian security apparatus and no scope for offensive operations unless explicitly requested by J & K S in extra ordinary circumstances. This would mean no role for the Indian security apparatus in the internal policing of J & K S and strict adherence to defense of the borders.

Mapping the Indian Overlap (Defence and Security Aspect)

The result of the Indian overlap on to the defense and security aspect of the reference point model of independent homeland is:

Defence would be the sovereign responsibility of the state of India.

The long term objective would be to convert the entire territory of the state of J&K into a neutral, peace zone. The long term objective would be to demilitarize the state of J & K. This can be achieved with the concurrent decommissioning of weapons of the non state armed groups and achieving an enabling environment for demilitarization. As conflict transformation proceeds and once peace has taken hold, a new security paradigm would emerge within the region and new structures would sustain it.

The state of J & K S would complement the Indian role in the defence of the borders of the state of J & K S.

The number of troops required to defend the state of J & K S would be mutually agreed between the state of J & K S and the state of India. Indian contingents in the state of J & K S would not exceed the agreed numbers. Indian forces and armaments shall be redeployed to agreed locations and adjusted to agreed levels, and any forces and armaments in excess shall be withdrawn.

Locations and land for use of the Indian security apparatus would be mutually decided between the state of J & K S and the state of India.

The daily movement of the Indian security apparatus within the state of J&KS would be under the escort of the government of the state of J & K S. The movement would occur at a time and by the route which will cause no inconvenience to the civilian inhabitants. The government of J & K S would be informed about the timetable of movement of security contingents.

The Indian security apparatus would have no role in the internal policing of the state of J & K S.

The state of J & K S would have the right, to not allow the usage of its territory for any overt or covert hostile actions against the state of Pakistan. J&KS would not put its territory at the disposal of India for military operations against Pakistan.

Mapping the Pakistani Overlap

A Pakistani overlap indexed against the sentiment could have significantly impacted the reference point model across the two parts of J & K compared to India. However the impact is going to be diluted due to the lack of territorial control on the part of J & K under the Indian administration. Territorial control over the part of J&K under its administration will work to the advantage of the state of Pakistan and the Pakistani overlap on that part will be proportionate to the Indian overlap on the part of the territory of J & K under the Indian administration. The Pakistani overlap onto J&K under its administration will replicate the nature of relationship evolved between the state of India and J&KS. All the details applying to the Indian overlap would apply to the Pakistani overlap.

Summary of the Pakistani Overlap on J & K M

In every aspect, the Pakistani overlap on J & K M will be identical and parallel to the Indian overlap on J & K S.

J & K M has full internal independence on matters pertaining to the internal matters.

Internal affairs or internal matters of the state of J & K M would mean all areas or subjects other than defence and foreign affairs. Economics is treated as a separate subject in this model.

The state of J & K M would be vested with executive, legislative and independent judicial powers including final adjudication.

The state of Pakistan conducts matters pertaining to external affairs of State of J & K M.

J & K M has the right to pursue a "defined relationship with the state of India and J & K S".

J & K M has complete economic sovereignty. It can pursue an independent economic system in accordance with its interests.

J & K M would be a separate customs territory.

The Pakistani state would not levy taxes in J & K M. Income tax, customs and all other levies would be a subject of the state of J & K M.

Pakistani currency would continue to be the legal tender in J & K M.

The state of Pakistan along with State of J & K M would jointly defend the borders against any external threat or aggression.

The security apparatus of the state of Pakistan would have no role in the internal policing of J & K M.

J & K M would have the right not to allow the usage of its territory for any hostile actions against the state of India.

Creating Sectoral Overlaps between the two Parts of J&K

So far we have been able to evolve the broad contours of relationships between the states of India and Pakistan and the parts of J & K under their administration. Unification of the two parts of the state into a single entity as it existed on 15 August 1947 is an essential parameter of the sentiment. The pattern on which the evolution of the eclectic model is progressing rules out geographical and political unison into a

single sovereign entity. We look at ways of unification which bypasses the need for geographical and political unification. The concept that we want to put forward is one of psychological unification. It entails the two entities being able to behave and operate like a single entity and yet have different sources of sovereignty or linkages. This means making the current impediments to psychological unification irrelevant and exploring sectors where joint operation is possible and making them more relevant.

The sectors that we want to explore for overlap are:

Economic union

Joint immigration controls for movement of the state subjects of J&KM and J&KS, within J & K

Joint management of natural resources

Sector specific cooperation, coordination, consultation

Economic Union

The overlap in the economic system would perhaps be the most important factor in the psychological unification of the two parts of J & K. The concept of an economic union is not confined to economics. The spread of the economic union is vast and an operational economic union is also a political and a psychological union. This would be a case of total overlap. Both the parts of J&K have full economic sovereignty in our model. The two parts of J & K would jointly formulate an economic system in accordance with their interests and the wishes of the peoples of the two parts of J & K. This would mean that they are a part of an economic union and this union would be a separate custom territory.

The two parts of the state of J & K with separate sovereignty linkages would form an economic union viz. the J & K economic union.

The economic union of the state of J & K would be a separate custom territory

The economic union of the state of J & K would mean free movement of goods, services, capital and labour between the two parts of the state of J & K.

Internal barriers to trade would be removed while external barriers to trade would be harmonized.

In the earlier relationships between India and J & K S and Pakistan and J&KM, the concept of an independent economic system has been analyzed in detail in the economics aspect section. These rights would be pooled together and the J & K economic union would have the liberty to use the diplomatic sections of India or Pakistan in pursuit of their economic interests, subject to the conditions enumerated in these sections.

The economic union of the state of J & K would jointly coordinate the representation of their interests in the sphere of external economic affairs under the terms set out in the earlier relationships, described above (relationship between J&KS and India; relationship between Pakistan and J & K M) i.e. either of the two states of J&K could utilize the diplomatic offices of either India or Pakistan or both to pursue issues pertaining to external trade with other countries.

The economic union of the state of J & K would adopt common tariffs and barriers against the rest of the world. Tariffs and barriers against India and Pakistan would be the same but different from the tariffs from those against the rest of the world.

The economic union would negotiate a non reciprocal preferential trade agreement with the states of India and Pakistan. This would mean duty free access of goods of J&K economic union origin, into India and Pakistan. Third country goods exported from the J & K economic union into India or Pakistan would attract the normal tariffs.

The J &K economic union would on its own maintain and develop economic and trade relations with all states and regions. The J & K economic union could participate in relevant international organisations and international trade agreements (including preferential trade arrangement), export quotas, tariff preferences and other similar arrangements which might be obtained by the J & K economic union. These arrangements if obtained would be exclusively enjoyed by the J & K economic union.

The J & K economic union could directly source and receive foreign aid, foreign borrowing unless borrowing needs to be underwritten and guaranteed by the state of India or Pakistan. The decision to underwrite or guarantee foreign borrowing by the J&K economic union would solely be the discretion of India or Pakistan.

Procedures pertaining to the issue of import financing, realization of export proceeds would have to be worked out and harmonized.

The economic union of the state of J & K would mean harmonization of monetary system. In the current context this would mean acceptance as legal tender both the Indian and the Pakistani currencies.

The economic union of the state of J & K would mean integration of labour markets. Nationals of the state of J & K on both the sides of the LOC would be able to move and work freely in both the entities of J & K S and J & K M, subject to the production of valid documents of identity.

There would be no restriction on capital flows between the two parts of the state of J & K.

The economic union of the state of J & K would mean harmonization of procedures and policies in various sectors. This entails integration and cooperation in various sectors.

Although the concept of an economic union rarely leaves a sector untouched, some of the changes envisaged would be:

Common banking norms and regulations

Joint development of banking, insurance sector

Cooperation in planning and development

Harmonized fiscal policy to ensure flow of finances to prioritized sectors of the economic union

Cooperation in Investment

Integration of transport infrastructure to develop inter-territorial transport network and the transport network to India and Pakistan

Integration of energy infrastructure

Joint exploration of natural resources and energy sector

Harmonization of industrial policy

Harmonization of labour laws

Harmonization of environmental laws and regulations

Joint agricultural market

Harmonization of standards for acceptance of validity of documents and qualifications

All import and export laws, banking laws and regulations, corporate laws, tax laws, excise laws and all other laws pertaining to economic and corporate activity would be the same for both the parts of the state of J & K.

Taxes would be levied by J & K S and J & K M as per the common laws in their respective areas.

Integration of the transport infrastructure would mean movement of vehicular traffic from the boundaries between Pakistan and J & K M to boundaries between India and J & K S. Free Movement of trade within the J & K economic union would mean that Indian vehicles could ply in J & K M and Pakistani vehicles could ply in J&KS. The onward movement of direct vehicular traffic would depend on the agreed arrangements.

Joint Immigration Controls for Movement of Residents of J&KM and J&KS within J&K

The residents of J & K would have the right to travel across the two parts of J & K. Right to travel would be matter of birthright for the residents of the two parts of J&K. This facility would be restricted to the residents of the two parts of J & K. This necessitates the need for proper identification documents. Life long identity cards specifically for purposes of travel across the two parts of J & K could be issued by a joint authority. Broad contours of the policy are given below.

Travelling across to the two parts of J & K would be a birthright for the residents of the state of J &K.

Proper identity cards issued jointly, specifically to facilitate travel of the residents of J & K would be required as proof of residence.

The residents would be allowed unrestricted travel trough designated posts on production of identity cards.

The immigration posts specifically for travel of the residents of J & K would be jointly run by the governments of the two parts of J & K.

The residents could travel on foot, by bus or use their private vehicles to travel across the two parts.

The posts would be open throughout the day and night, all through the year.

Joint Management of Natural Resources

J & K has abundance of natural resources. The overlap in this sector should have been natural. Joint strategizing can maximize the benefits of the utilization of the natural resources. So far the inhabitants of the impoverished region have not been able to benefit from the optimal utilization of these resources and in fact do not even possess sovereignty over these resources. Given the hostile history of the region political clout has determined the control of the natural resources. A joint initiative will increase the clout of J & K on its natural resources and is likely to optimize the utilization of the natural resources in J & K.

A joint strategy to protect the interests of the state of the J & K in matters pertaining to the utilization and sharing of natural resources

A Joint strategy to demand equitable share in the Indus water treaty in accordance with international law pertaining to the sharing of river water

A Joint strategy to protect the interests of the state in any future treaties pertaining to sharing of river water among India, Pakistan and J & K

A joint strategy on renegotiation of the terms and conditions of the sharing of energy from the hydroelectric power stations set up in both the parts of J&K

A joint strategy on funding, utilization, sharing of hydroelectric projects likely to be set in the future

Joint ventures on exploitation and marketing of minerals in J & K

Sector Specific Cooperation, Coordination, Consultation

The two parts of the state of J & K would coordinate in various sectors outside the domain of the economic union. They would endeavour to coordinate, harmonize their policies through legislation, or through agreements, or through consultations and evolve joints standards, wherever appropriate in the following sectors:

Joint development of tourism sector

Joint management of demographic data

Joint development of education sector

Joint development of social welfare sector

Joint development of IT and communications sector

Joint development of civil aviation sector

Joint development of health sector

Joint protection of environment

Frequent sporting activities including a joint team in international sporting events and tournaments, where non state entities take part.

Joint cultural activities

Joint forest policy

Joint human rights laws and policies

Joint institutions of scientific research.

Joint research and preservation of archaeological and heritage sites.

Joint development of museums, archives and libraries.

A comprehensive multi modal transport strategy to facilitate cross border movement of commercial and private transport

Integrated border management

Structuring the Pakistani Overlap on J&KS and Indian Overlap on J&KM

The overlaps or accommodation of the sentiment in accordance with the variance and within the constraints of the existing territorial dynamics has yielded three sets of relationships so far. A new relationship between the two parts of the state of J & K has emerged and has been defined. Two existing relationships between J & K M and Pakistan and J & K S and India have been redefined.

Relationship between the state of India and J & K S has been redefined.

Relationship between the state of Pakistan and J & K M has been redefined.

A relationship between the states of J & K M and J & K S has been defined.

The model still does not cater to the claims of the state of India and the state of Pakistan on J & K M and J & K S respectively. The Indian overlap onto the reference point model produced a relationship between J & K S and the state of India- where the level of independence of J & K S is of a diluted degree compared to the reference point model. So we have a comparable analysis between an aspired relationship (reference point model) and a redefined relationship (eclectic model). A relationship exists on paper and in practice by virtue of the territorial control.

In the case of Pakistan claims exist on paper. In practice there is no operational relationship between the state of Pakistan and J & K S. Lack of territorial control translates into lack of any influence on the government of J&KS. The spirit of our model is the dilution of the reference point model which is based on the sentiment of an independent homeland. Accommodating the Indian claims is a compulsion arising out of territorial control. Encumbering the political independence further by entering into a political relationship with the state of Pakistan is against the spirit of our whole thesis of the independent homeland being the reference point. Similarly J & K M cannot enter into a new political relationship with the state of India and further dilute its independence. The set of political relationships evolved above denote a state of primary political equilibrium within the existing 'territorial realities'.

The claims of the two states especially Pakistan would have to be addressed in order to have a balanced equilibrium at the macro level. Pakistani sentiment in J & K S has a large presence and absence of any formal relationship with J&KS would mean

an inadequate accommodation of the claims of the state of Pakistan and also the segment of population in J & K S who represent this sentiment.

In the process of evolving the contents of the eclectic model, in the external aspect there is a scope for J & K S to conduct a "defined relationship with the state of Pakistan" and J & K M to conduct a "defined relationship with the state of India". We have to define a formal relationship which does not disturb the primary political equilibrium achieved so far. This would mean defining a relationship which does not disturb the political arrangements evolved so far and formulates a relationship in other fields. The contours of this relationship need to be defined.

Pakistan and J & K S would have the right and capacity to enter into an independent relationship with each other. "Contours of the relationship could be defined mutually between the states of India, Pakistan and the two parts of J&K. The relationship could mean exclusion of some sectors". Pakistan and J&KS would enter into a relationship in various spheres in a manner, not prejudicial to the interests of the state of India.

This relationship would once again have reciprocal dimensions. India and J&KM would have the right and capacity to enter into an independent relationship with each other within the same contours.

The scope of the relationship within the contours could vary. As long as the relationship stays within the defined contours, the results of the relationship solely depends on the way the relationship between the two parties evolves. It is not necessary that the two set of relationships emulate every action.

Mapping the Pakistani Overlap on J&KS

The Indo Nepal Treaty of Peace and Friendship 1950 could be an inspiring model to define the contours of the relationship between Pakistan and J & K S.

The state of Pakistan would acknowledge and respect the current arrangement and formally enter into an independent relationship with the state of J & K S. The relationship would be based on everlasting peace and friendship.

The state of Pakistan, as a token of appreciation for the historical bond exhibited by the people of the state of J & K S would on a non reciprocal basis give the state subjects of the state of J & K S, in its territory, national treatment with regard to

participation in industrial and economic development of its territory and would grant concessions and contracts relating to such development.

The state of Pakistan would agree to grant on a non reciprocal basis, to the state subjects of the state of J & K S in its territory, the same privileges that it gives to its nationals in matters of residence, ownership of property, participation in trade and commerce, employment and other privileges of similar nature.

The state of J & K S would grant similar privileges to the nationals of the state of Pakistan but would be able to reciprocate to an extent as defined by the levels of independence of the government of the state of J & K S and subject to Indian interests.

By virtue of the existence of the J & K economic union, the state of Pakistan and the nationals of the state of Pakistan would have the opportunity to invest, trade, setup business in the J & K economic union at par with that of the Indian state and the nationals of the Indian state.

The state of Pakistan could provide aid and funding to development and infrastructure projects, set up educational institutions, set up hospitals and enter into a range of other similar activities in the state of J & K S.

The accessibility of Pakistani nationals into the state of J & K S could be made more liberal. J & K S could be opened up to the nationals of state of Pakistan. A mechanism could be set in place wherein Pakistani nationals intending to visit the state of J & K S would have to apply to the government of J & K M for entry permits, which would have a joint mechanism for processing the entry permits.

Residents of J & K S would be allowed unrestricted travel to the state of Pakistan. The joint ID cards issued by states of J & K S and J & K M would be the document needed for travel and stay in Pakistan. They would not need an Indian passport to travel to the state of Pakistan.

The state of Pakistan would have a representative office in J & K S to facilitate the smooth conduct of the relationship mentioned above.

J & K S would have a representative office in the state of Pakistan to facilitate the smooth conduct of the relationship mentioned above.

The relationship aims to establish civilized, unrestricted interaction between the residents of J & K S and the residents of the state of Pakistan. This interaction has

virtually stopped in the last five decades and a start of civilized traffic between the two states would be a big psychological indicator of change and to a certain extent tries to cater to the Pakistani strand of the sentiment.

Mapping the Indian Overlap on J&KM

These measures could be replicated between the state of India and J & K M.

Summarizing the Context and the Contents

The context and the contents of the eclectic model together evolved a set of overlapping relationships.

A relationship between the state of India and J & K S. (Redefined)

A relationship between the state of Pakistan and J & K M. (Redefined and at par with the above relationship).

A relationship between J & K S and J & K M. (Defined).

A relationship between J & K S and the state of Pakistan. (Defined).

A relationship between J & K M and the state of India. (Defined).

These relationships depict a new political landscape of increasing rights of the peoples of J & K and could herald a new era of peace. This could well be an era of interdependence defined by a sincere process of accommodation of the sentiment in accordance to the variance and acknowledgement of territorial realities and based on mutual trust and respect. The new relationships have a different approach of the way power and authority should be shared among the different partners. This necessitates the need for redefining the formal institutional structures required to administrate, explore new institutions that would be required for the management of these new relationships and analyze the constitutional issues involved.

Chapter 5A

The Eclectic Model

Basic Principles

New State of Affairs

Empirical Support

Salient Features

The Context of the Eclectic Model

The Contents of the Eclectic Model – Five Relationships

Relationship between India and J & K S in the New State of Affairs

•Internal Aspect • Economic Aspect •External Aspect •Defence and Security Aspect

Relationship between Pakistan and J & K S in the New State of Affairs

•Internal Aspect • Economic Aspect •External Aspect •Defence and Security Aspect

Relationship between J & K S and J & K M in the New State of Affairs

•The J & K Economic Union •Joint Immigration Control for Movement of Residents of J&KM and J & K S within J & K •Joint management of Natural Resources • Sector Specific Cooperation, Coordination, Consultation

Relationship between Pakistan and J & K S in the New State of Affairs

Relationship between India and J & K M in the New State of Affairs

Constitutional Issues

•Territory of the State •Citizenship •Institutions

►The Executive ► The State Legislature ►Judiciary

Joint Institutions

●Joint Institution to Conduct Relationship between J & K M and J & K S ●Joint Institution to Conduct "Defined Relationship between Pakistan and J & K S" ●Joint Institution to Conduct "Defined Relationship between India and J & K M"

Legality and Constitutional Sanctity

Interim or Final- Resolution or Solution

Property and Right to Return

Phased Implementation

Consent

Finality

THE ECLECTIC MODEL

In Chapter 5, we created a series of overlaps to evolve the contents of the eclectic model. The context in which these contents were evolved was also put forward. **In this chapter we try to present a summarised and a formatted version of the eclectic model.** The justification and detailed explanations are given in the previous sections, in evolving the eclectic model.

Basic Principles

New State of affairs

Empirical support

Salient features of the new state of affairs

The context of the eclectic model

The contents of the eclectic model- Five relationships

Constitutional issues

Institutions - Executive, Legislature, Judiciary

Joint Institutions

Legality and constitutional sanctity

Property and Right to Return

Interim or Final - Resolution or solution

Phased implementation

Finality

New State of Affairs

The new system evolved in the eclectic model would be called the "new state of affairs". The new system of affairs represents the context and the contents evolved in the eclectic model. The contents of the eclectic model are compatible only with the context in which they have evolved.

The new state of affairs comes into existence after decades of conflict which has meant immense pain and suffering for the people of the state of J&KS.

It is important that we remember those people who lost their lives in the conflict. People with different ideologies lost their lives to different sources of violence. Peace would perhaps be the biggest tribute to all those who lost their lives. In remembering them we can unite them by showing compassion to heirs of the unfortunate victims, irrespective of their political ideologies.

It is important we recognize the conflicting aspirations and the history of conflicts in the region. Peaceful and dignified coexistence is the guiding objective of the new state of affairs.

The new state of affairs is a new set up of civilized and dignified coexistence evolved on the principle of variance of sentiment, between India, Pakistan, J & K S and J & K M. It is based on the principle of sovereign right of the states of J&KS and J & K M to exercise sovereignty over all matters within their territorial jurisdiction, while allowing the exercise of sovereignty by India and Pakistan over certain subjects. It is in essence the synergistic sharing of sovereignty. New power sharing structures are evolved between India and J&KS and Pakistan and J & K M. Interstate relationships allow formal relationships between J & K M and J & K S, India and J & K M, and Pakistan and J & K S.

In the new state of affairs the concept of internal sovereignty, economic sovereignty is far more independent than the prevalent concepts of autonomous regions, self rule, internal autonomy envisaged in the academic literature of international law. The new state of affairs, apart from independence afforded to

provincial governments in traditional subjects in internal administration also covers areas like communications, civil aviation, Income tax, customs and other duties and levies, participation in international agreements in pursuit of economic objectives etc. The competence of the central government is confined to defence, foreign affairs and currency. These principles of governance apply to the relationship between India and J & K S and Pakistan and J & K M. The interstate arrangements evolved are reciprocal in nature.

The states of J & K S and J & K M are of equal status. Within the limits of the Constitution and their territorial boundaries, they sovereignly exercise all powers not vested by the Constitution in the Indian or the Pakistani state.

The new state of affairs needs explicit support and constitutional consent of India, Pakistan, J & K S and J & K M.

The new state of affairs would have to be constitutionally binding on all the parties. Any change would need the constitutional consent of all the parties.

Empirical Support

The chapter on empirical evidence has inspired both the contents and the context of the eclectic model. It has provided valuable insight on a range of conflict resolution variables.

The principles of governance between J & K S and India and J & K M and Pakistan have been largely inspired by the model of relationship between China and Hong Kong. The Hong Kong model of power sharing structure is an optimum example in terms of the independence and the powers of the government of Hong Kong.

The interstate relationships between J & K S and J & K M, J & K S and Pakistan and J & K M and India have been inspired by the Irish model i.e. the Good Friday Agreement.

The contents of the relationship between J & K S and Pakistan and J & K M and India have been mainly modelled on the 1950, Indo Nepal Treaty of Peace and Friendship.

The viability and practicability of a separate custom territory in the form of the J&K economic union has been modelled on the 1960, Indo Nepal Treaty of Trade and Transit, and its subsequent amendments. Although Nepal is a sovereign independent nation and a separate custom territory, India and Nepal by virtue of Indo Nepal Treaty of Friendship and Peace and the Indo Nepal Trade and Transit Treaty have liberal norms of coexistence- travel, movement of goods and services across the borders are very liberal. Similar arrangements could be emulated in the state of J & K S.

The wording, legal jargon in formulating the principles of governance has been partly borrowed from the white paper issued by the UK Government, pertaining to the future of Hong Kong.

The term, "new state of affairs" has been borrowed from the Annan Plan for Cyprus settlement (2002-2003). The settlement was not accepted by the conflicting parties. However the concept of new state of affairs and its evolution around the factors specific to Cyprus conflict, rather than implementing stale international prescriptions was an inspiring factor. The Annan plan also provided valuable insight into the concept of demilitarization and mutually agreed levels of military presence, compatible with new objectives.

The Dayton Peace Accord and the Kosovo Interim Agreement for Peace and Self Government (February 23, 1999) provided insights into the concept of demilitarization, neutral zone etc.

Salient Features

The new state of affairs is a summation of the context and the contents evolved in the eclectic model. The context provides the settings against which the contents of the eclectic model have evolved. The most important factor in the context is the reference point in the evolution process. The model has evolved around the concept of variance in the sentiment and presence of majority sentiment of an independent homeland for the state of J & K. Overlaps were created onto the independent homeland model to accommodate the minority sentiments of India and Pakistan. The evolved model out of the overlaps is the eclectic model.

The territorial dynamics remain unchanged but the parameters pertaining to exercise of sovereignty by the two parts of the state of J & K show a perceptible change for the better.

The model has evolved against the reference point of an independent homeland.

The evolution process has produced five overlapping relationships

The evolution process has evolved new power sharing structures between J&KS and India and J & K M and Pakistan

The evolution process has evolved an economic union between the two parts of the state of J & K. This has meant the creation of a single unified economic territory of J&K out of two existing distinct political and geographical entities of J & K S and J&KM.

The two parts of the state of J & K together constitute a separate custom territory

The evolution process has evolved a system of joint management of movement of residents of J & K S and J & K M across J & K, joint management of natural resources and sector specific cooperation, coordination and consultation.

The evolution process has evolved new relationships between India and J&KM and Pakistan and J & K S

The Context of the Eclectic Model

The context is pivotal to the eclectic model and provides the settings and the conditions under which the contents of the eclectic model evolve. The sentiment sets the starting point and the variance in sentiment sets the constraints for the evolution process. The context is a mode of accommodating a host of invisible dimensions into the resolution process. These are listed below.

Sentiment, Variance in Sentiment, Reference Point – The Majority Sentiment, Process of Accommodation, Sanctity of Sacrifices, Psychology of Nomenclature, Psychology of Evolution and Devolution, Involving Armed Groups, Social Stigmatization of Violence – Post Solution, Generating Consensus among the Peoples,

Divided J & K Leadership, Evolving Consensus among Sections of Leadership in J&K, Identifying Leaders or Developing Leaders in J& K, All Inclusive Process, Aligning the Current Peace Process, Institutionalization of the Dialogue Process, Concept of Consent, Institutional Dichotomy, Economic Agendas of Conflict, Opt Out Option – Ethnic Accommodation, Human Rights, Truth and Reconciliation Commission, Return of Displaced Persons, Release of Political Prisoners, Status of Ex-Militants, Rehabilitation of Victims of Violence, Making J & K a Peace Zone – Demilitarization.

Detailed definition of the context is provided in chapter 5, under the heading "evolving the context of the eclectic model".

The Contents of the Eclectic Model- The Five Relationships

Relationship between India and J & K S

Relationship between Pakistan and J & K M

Relationship between J & K S and J & K M

Relationship between Pakistan and J & K S

Relationship between India and J & K M

Relationship between India and J & K S in the New State of Affairs

Internal Aspect

In the new state of affairs, the state of India and the state of J & K S would have a system of shared sovereignty. Except for foreign affairs and defence affairs which are the responsibilities of the state of India, the state of J & K S would be vested with

executive, legislative and independent judicial powers including final adjudication and full economic sovereignty.

In the new state of affairs, the government of J & K S would be a single political authority on all matters pertaining to the internal matters of the state. The government would have complete internal independence to deal with its internal affairs.

In the new state of affairs, J & K S would have the right to internal independence and would hence exercise freely without any sort of interference from India, all its legislative, executive and legal powers.

In the new state of affairs, internal affairs or internal matters of the state of J&KS would mean all areas or subjects other than, defence and foreign affairs. Economics is treated as a separate subject in this model.

In the new state of affairs, Indian laws would not be applicable on matters pertaining to the internal affairs of the state of J & K S.

In the new state of affairs, J & K S would have the right to exercise jurisdiction over its territory and over all persons and things therein, subject to the immunities recognized by international law.

In the new state of affairs, the government of J & K S would be in accordance to the constitution of J & K S and have a diluted linkage with the state of India. The state of J & K S would have a separate constitution. A new constitution compatible with the new system would have to be drafted and approved by the people of the state of J&KS. The state of J & K S would have its own system of laws in accordance with the constitution and have a separate flag and a national anthem.

In the new state of affairs, the government of J & K S would be a democratically elected government, duly elected by the people of J & K S.

In the new state of affairs, the democratically elected government would be the institution to govern the territory, the people and deal with the state of India.

In the new state of affairs, the Government, executive and legislature of the state of J & K S would be comprised of its citizens. The legislature would be elected by the people and the executive and the head of council of ministers would be elected by the legislature. The executive authorities would abide by law and would be accountable to the legislature.

In the new state of affairs, the legislative power of the state of J & K S would be vested in the legislature of the state of J & K S. The legislature could on its own authority enact and amend laws in accordance with the provisions of the constitution.

In the new state of affairs, judicial power in the state of J & K S would be vested in the courts of the state of J & K S. The courts would exercise judicial power independently and free from any interference. Members of the judiciary would be free from legal action in respect of their judicial functions. The courts would decide cases in accordance with the laws of the state of J & K S.

In the new state of affairs, judges of the state of J & K S would be appointed by the head of the Executive on the recommendations of an Independent legal commission. Judges would be chosen by reference to their judicial qualities and could be recruited from other common law jurisdictions.

In the new state of affairs, the power of final judgement of the state of J&KS would be vested in the highest court of the state of J & K S.

In the new state of affairs, J & K S would have an independent election commission to supervise, direct and control the elections in the state of J&KS.

In the new state of affairs, contestants to elections would be required to take an oath of allegiance towards the J & K S constitution.

In the new state of affairs, the state of J & K S would employ residents of J&KS only; to serve as public servants at all levels. This would mean that non resident public servants previously serving in the state of J & K S in all government departments would not remain in employment.

In the new state of affairs the state of J & K S could by special permission recruit non residents including foreign nationals as advisers to different departments in the government. The purpose would solely be to achieve excellence in particular fields where foreign expertise is desirable.

In the new state of affairs, the maintenance of public order and internal policing would be the responsibility of the state of J & K S. The military forces or the paramilitary forces of the state of India in the state of J & K S would be specifically for the purpose of defence and would have no role or right to interference in the internal affairs of the government of the state of J & K S.

In the new state of affairs, the state of J & K S would protect the rights of freedom of the inhabitants and other persons in the state of J & K S according to law.

In the new state of affairs, J & K S will have full freedom to establish its social, cultural, educational, linguistic systems, and maintain law and order in accordance with the will of the people without any interference direct or indirect from the state of India.

In the new state of affairs, J & K S would abide by its duty to respect human rights and fundamental rights in accordance with international law.

In the new state of affairs, the current state subject holders or persons qualifying for issuance of state subject would be the permanent residents of the state of J & K S.

In the new state of affairs Indian citizens would continue to have right to unrestricted travel in the state of J & K S.

Economic Aspect

In the new state of affairs, the state of J & K S would have an independent economic system and would decide its economic and trade policies on its own.

In the new state of affairs, the state of J & K S would be a separate customs territory.

The problems pertaining to existence of two separate custom territories (India and J & K S) with unsecured borders would have to be worked out. Subject to the principle that free travel is not restricted, the India Nepal Trade and Transit Treaty and its subsequent amendments could provide a model for emulation.

In the new state of affairs, the state of India would not have the right to levy any taxes on the state of J & K S. The state of J & K S would have its own system of tax collection. This would mean that the current system of central taxation including income tax, by the state of India in the state of J & K S would cease.

In the new state of affairs, the state of J & K S would deal on its own with financial matters, including disposing of its financial resources and drawing up its budget and its final accounts.

In the new state of affairs, the state of J & K S would have full economic sovereignty over its natural resources.

In the new state of affairs, the Central Bank of the state of J & K S would have the independence to formulate its own banking regulations and norms for lending, borrowing, interest rates and other banking activities.

In the new state of affairs, the Indian Rupee would continue to be the legal tender. Indian laws pertaining to the physical outflow of the rupee would apply to the state of J & K S. The state of India would have the discretion to monitor anti smuggling measures being taken by the state of J & K S. (As the model incorporates the relationship between J & K S and J & K M, both Indian and Pakistani currencies would be legal tender in the economic union of J & K.)

In the new state of affairs, the state of India would continue to finance the expenditure of the government of the state of J & K S. A separate agreement would have to be worked out over import financing, availability of foreign exchange, foreign exchange reserves of the state of J & K S and realization of export invoices.

In the new state of affairs the state of J & K would formulate its own laws pertaining to import, export, corporate rules and all laws pertaining to economic or corporate activity.

External Economic Affairs

In the new state of affairs, Foreign Affairs would be the sovereign responsibility of the state of India. The responsibility would be carried out subject to certain mutually binding conditions. The state of J & K S could carry out some activities in the sphere of foreign affairs in pursuit of economic objectives. These activities would have to be reported to the Indian state for reference.

In the new state of affairs, the state of J & K S would on its own maintain and develop economic and trade relations with all states and regions. The state of J & K S could participate in relevant international organisations and international trade agreements (including preferential trade arrangement), export quotas, tariff preferences and other similar arrangements which might be obtained by the state of J&KS. These arrangements if obtained would be exclusively enjoyed by the state of J&KS. Any such arrangements would be reported to the Indian state for reference.

In the new state of affairs, the state of J & K S could directly source and receive foreign aid, foreign borrowing unless borrowing needs to be underwritten and guaranteed by the state of India. The decision to underwrite or guarantee foreign borrowing by the state of J & K S would solely be the discretion of the state of India.

In the new state of affairs goods of J & K S origin would enjoy duty free access into the state of India on non reciprocal basis.

In the new state of affairs the state of J & K S would have the authority to issue own certificates of origin for products manufactured locally, in accordance with the prevailing rules of origin.

External Aspect

In the new state of affairs, Foreign affairs would be the sovereign responsibility of the state of India.

In the new state of affairs, subject to the principle that foreign affairs are the responsibility of the state of India, representatives of the state of J & K S could participate, as members of the delegation of the government of India, in negotiations at diplomatic level directly affecting the state of J & K S. The state of J & K S could maintain and develop relations and conclude and implement agreements with states, regions and relevant international organizations in the appropriate fields, including economic trade, communications, services, tourism, cultural, educational exchanges, scientific cooperation, sporting activities, etc. - provided that such agreements do not cause prejudice to the authority of Indian Government and is compatible with the new state of affairs. J & K S may depute representatives to engage in relations with these states, regions and relevant international organizations and conclude and implement agreements on these issues. The Indian government would facilitate these activities since the deputed representatives of J & K S would be accredited as part of the diplomatic missions of India. These activities would be reported to the Indian state for reference.

In the new state of affairs, Foreign Consular and other official and semi official missions may be established in the state of J & K S with the approval of the state of India. States not recognized by the state of India could establish non governmental institutions.

In the new state of affairs, the residents of the state of J & K S would travel abroad on special passports issued by the Indian government. These special passports issued to the residents of the state of J & K S would bear certain visible insignia indicating the special category of the passports. The special passports would assign all the rights and responsibilities to the holder as holders of the regular Indian passport possess. The special passports could also offer the holder other rights such as visa-free entrance into states that may choose to offer such gestures. The state of India would only be the issuing authority. Recommendation for issuance would have to come from the state of J & K S.

The power to issue or deny visas to foreign nationals would rest with the Indian government. Concerning the issuance of visas to foreign nationals who seek to visit J&KS as tourists or seek to work, reside, study, teach, research, attend conferences, function as media, etc. in J & K S, such foreign nationals would be required to apply for visas through the proper channels at the embassies of India. A foreign national issued a tourist visa would have the right to visit J & K S accordingly. In the new state of affairs, some cases would have to be referred to the state of J & K S for approval and a corresponding mechanism would have to be worked out. The issuing of those categories of visas that facilitate non-tourist activities conferring special activities, rights, privileges and/or responsibilities to foreign nationals in J & K S would be one such case where approval would be required. The state of J & K S could require the Indian government to issue special category visas valid only for J&KS, in those cases where the Indian government regards a foreign national ineligible for a regular Indian visa. The state of J & K S could also refuse any foreign national the right to entry in J&KS if he or she poses a threat to the interests of J & K S. The Indian government would not be allowed to stop persons of J & K origin (PJKO) from visiting J & K S. A visa-free regime and the exercise of other rights and privileges in J & K S would be granted to such persons of J & K origin (PJKO).

In the new state of affairs, subject to the principle that foreign affairs are the responsibility of the state of India, the state of J & K S will have the right to engage on its own with the state of Pakistan and the state of J & K M within the parameters of the respectively "defined relationships".

Defence and Security Aspect

In the new state of affairs, defence would be the sovereign responsibility of the state of India.

In the new state of affairs, the long term objective would be to convert the entire territory of the state of J & K into a neutral, peace zone. The long term objective would be to demilitarize the state of J & K. This can be achieved with the concurrent decommissioning of weapons of the non state armed groups and achieving an enabling environment for demilitarization. As conflict transformation proceeds and once peace has taken hold, a new security paradigm would emerge within the region and new structures would sustain it.

In the new state of affairs, the state of J & K S would complement the Indian role in the defence of the borders of the state of J & K S.

In the new state of affairs, the number of troops required to defend the state of J&KS would be mutually agreed between the state of J & K S and the state of India. Indian contingents in the state of J & K S would not exceed the agreed numbers. Indian forces and armaments shall be redeployed to agreed locations and adjusted to agreed levels, and any forces and armaments in excess shall be withdrawn.

In the new state of affairs, locations, land for use of the Indian security apparatus would be mutually decided between the state of J & K S and the state of India.

In the new state of affairs, daily movement of the Indian security apparatus within the state of J & K S would be under the escort of the government of the state of J&KS. The movement would occur at a time and by the route which will cause no inconvenience to the civilian inhabitants. The government of J&KS would be informed about the timetable of movement of security contingents.

In the new state of affairs, the Indian security apparatus would have no role in the internal policing of the state of J & K S.

In the new state of affairs, the state of J & K S would have the right, to not allow the usage of its territory for any overt or covert hostile actions against the state of Pakistan. J & K S would not put its territory at the disposal of India for military operations against Pakistan.

Relationship between Pakistan and J & K M in the New State of Affairs

Internal Aspect

In the new state of affairs, the state of Pakistan and the state of J & K M would have a system of shared sovereignty. Except for foreign affairs and defence affairs which are the responsibilities of the state of Pakistan, the state of J & K M would be vested with executive, legislative and independent judicial powers including final adjudication and full economic sovereignty.

In the new state of affairs, the government of J & K M would be a single political authority on all matters pertaining to the internal matters of the state. The government would have complete internal independence to deal with its internal affairs.

In the new state of affairs, J & K M would have the right to internal independence and would hence exercise freely without any sort of interference from Pakistan, all its executive, legislative and legal powers.

In the new state of affairs, internal affairs or internal matters of the state of J&KM would mean all areas or subjects other than, defence and foreign affairs. Economics is treated as a separate subject in this model.

In the new state of affairs, Pakistani laws would not be applicable on matters pertaining to the internal affairs of the state of J & K M.

In the new state of affairs, J & K M would have the right to exercise jurisdiction over its territory and over all persons and things therein, subject to the immunities recognized by international law.

In the new state of affairs, the government of J & K M would be in accordance to the constitution of J & K M and have a diluted linkage with the state of Pakistan. The state of J & K M would have a separate constitution. A new constitution compatible with the new system would have to be drafted and approved by the people of the state of J & K M. The state of J & K M would have its own system of laws in accordance with the constitution and have a separate flag and a national anthem.

In the new state of affairs, the government of J & K M would be a democratically elected government, duly elected by the people of J & K M.

In the new state of affairs, the democratically elected government would be the institution to govern the territory, the people and deal with the state of Pakistan.

In the new state of affairs, the Government, executive and legislature of the state of J & K M would be comprised of its citizens. The legislature would be elected by the people and the executive and the head of council of ministers would be elected by the legislature. The executive authorities would abide by law and would be accountable to the legislature.

In the new state of affairs, the legislative power of the state of J & K M would be vested in the legislature of the state of J & K M. The legislature could on its own authority enact and amend laws in accordance with the provisions of the constitution.

In the new state of affairs, judicial power in the state of J & K M would be vested in the courts of the state of J & K M. The courts would exercise judicial power independently and free from any interference. Members of the judiciary would be free from legal action in respect of their judicial functions. The courts would decide cases in accordance with the laws of the state of J & K M.

In the new state of affairs, judges of the state of J & K M would be appointed by the head of the Executive on the recommendations of an Independent legal commission. Judges would be chosen by reference to their judicial qualities and could be recruited from other common law jurisdictions.

In the new state of affairs, the power of final judgment of the state of J&KM would be vested in the highest court of the state of J & K M.

In the new state of affairs, J & K M would have an independent election commission to supervise, direct and control the elections in the state of J&KM.

In the new state of affairs, contestants to elections would be required to take an oath of allegiance towards the J & K M constitution.

In the new state of affairs, the state of J & K M would employ residents of J&KM only; to serve as public servants at all levels. This would mean that non resident public servants previously serving in the state of J & K M in all government departments would not remain in employment.

In the new state of affairs the state of J & K M could by special permission recruit non residents including foreign nationals as advisers to different departments in the

government. The purpose would solely be to achieve excellence in particular fields where foreign expertise is desirable.

In the new state of affairs, the maintenance of public order and internal policing would be the responsibility of the state of J & K M. The military forces or the paramilitary forces of the state of Pakistan in the state of J & K M would be specifically for the purpose of defence and would have no role or right to interference in the internal affairs of the government of the state of J&KM.

In the new state of affairs, the state of J & K M would protect the rights of freedom of the inhabitants and other persons in the state of J & K M according to law.

In the new state of affairs, J & K M will have full freedom to establish its social, cultural, educational, linguistic systems, and maintain law and order in accordance with the will of the people without any interference direct or indirect from the state of Pakistan.

In the new state of affairs, J & K M would abide by its duty to respect human rights and fundamental rights in accordance with international law.

In the new state of affairs, the current state subject holders or persons qualifying for issuance of state subject would be the permanent residents of the state of J & K M.

In the new state of affairs Pakistani citizens would continue to have right to unrestricted travel in the state of J & K M.

Economic Aspect

In the new state of affairs, the state of J & K M would have an independent economic system and would decide its economic and trade policies on its own.

In the new state of affairs, the state of J & K M would be a separate customs territory.

The problems pertaining to existence of two separate custom territories with unsecured borders (Pakistan and J & K M) would have to be worked out. Subject to the principle that free travel is not restricted, the Indo Nepal Trade and Transit Treaty and its subsequent amendments could provide a model for emulation.

In the new state of affairs, the state of Pakistan would not have the right to levy any taxes on the state of J & K M. The state of J & K M would have its own system of tax collection. This would mean that the current system of central taxation including income tax, by the state of Pakistan in the state of J&KM would cease.

In the new state of affairs, the state of J & K M would deal on its own with financial matters, including disposing of its financial resources and drawing up its budget and its final accounts.

In the new state of affairs, the state of J & K M would have full economic sovereignty over its natural resources.

In the new state of affairs, the Central Bank of the state of J & K M would have the independence to formulate its own banking regulations and norms for lending, borrowing, interest rates and other banking activities.

In the new state of affairs, the Pakistani Rupee would continue to be the legal tender. Pakistani laws pertaining to the physical outflow of the rupee would apply to the state of J & K M. The state of Pakistan would have the discretion to monitor anti smuggling measures being taken by the state of J&KM. (As the model incorporates the relationship between J & K M and J&KS, both Indian and Pakistani currencies would be legal tender in the economic union of J & K.)

In the new state of affairs, the state of Pakistan would continue to finance the expenditure of the government of the state of J & K M. A separate agreement would have to be worked out over import financing, availability of foreign exchange, foreign exchange reserves of the state of J & K M and realization of export invoices.

In the new state of affairs the state of J & K would formulate its own laws pertaining to import, export, corporate rules and all laws pertaining to economic or corporate activity.

External Economic Affairs

In the new state of affairs, Foreign Affairs would be the sovereign responsibility of the state of Pakistan. The responsibility would be carried out subject to certain mutually binding conditions. The state of J & K M could carry out some activities in the sphere of foreign affairs in pursuit of economic objectives. These activities would have to be reported to the Pakistani state for reference.

In the new state of affairs, the state of J & K M would on its own maintain and develop economic and trade relations with all states and regions. The state of J & K M could participate in relevant international organisations and international trade agreements (including preferential trade arrangement), export quotas, tariff preferences and other similar arrangements which might be obtained by the state of J&KM. These arrangements if obtained would be exclusively enjoyed by the state of J&KM. Any such arrangements would be reported to the Pakistani state for reference.

In the new state of affairs, the state of J & K M could directly source and receive foreign aid, foreign borrowing unless borrowing needs to be underwritten and guaranteed by the state of Pakistan. The decision to underwrite or guarantee foreign borrowing by the state of J & K M would solely be the discretion of the state of Pakistan.

In the new state of affairs goods of J & K M origin would enjoy duty free access into the state of Pakistan on non reciprocal basis.

In the new state of affairs the state of J & K M would have the authority to issue own certificates of origin for products manufactured locally, in accordance with the prevailing rules of origin.

External Aspect

In the new state of affairs, Foreign affairs would be the sovereign responsibility of the state of Pakistan.

In the new state of affairs, subject to the principle that foreign affairs are the responsibility of the state of Pakistan, representatives of the state of J & K M could participate, as members of the delegation of the government of Pakistan, in negotiations at diplomatic level directly affecting the state of J & K M. The state of J&KM could maintain and develop relations and conclude and implement agreements with states, regions and relevant international organizations in the appropriate fields, including economic trade, communications, services, tourism, cultural, educational exchanges, scientific cooperation, sporting activities, etc. - provided that such agreements do not cause prejudice to the authority of Pakistani Government and is compatible with the new state of affairs. J & K M may depute representatives to engage in relations with these states, regions and relevant international organizations and conclude and implement agreements on these issues. The Pakistani government would facilitate these activities since the deputed representatives of J & K M would be

accredited as part of the diplomatic missions of Pakistan. These activities would be reported to the Pakistani state for reference.

In the new state of affairs, Foreign Consular and other official and semi official missions may be established in the state of J & K M with the approval of the state of Pakistan. States not recognized by the state of Pakistan could establish non governmental institutions.

In the new state of affairs, the residents of the state of J & K M would travel abroad on special passports issued by the Pakistani government. These special passports issued to the residents of the state of J & K M would bear certain visible insignia indicating the special category of the passports. The special passports would assign all the rights and responsibilities to the holder as holders of the regular Pakistani passport possess. The special passports could also offer the holder other rights such as visa-free entrance into states that may choose to offer such gestures. The state of Pakistan would only be the issuing authority. Recommendation for issuance would have to come from the state of J & K M.

The power to issue or deny visas to foreign nationals would rest with the Pakistani government. Concerning the issuance of visas to foreign nationals who seek to visit J&KM as tourists or seek to work, reside, study, teach, research, attend conferences, function as media, etc. in J & K M, such foreign nationals would be required to apply for visas through the proper channels at the embassies of Pakistan. A foreign national issued a tourist visa would have the right to visit J & K M accordingly. In the new state of affairs, some cases would have to be referred to the state of J & K M for approval and a corresponding mechanism would have to be worked out. The issuing of those categories of visas that facilitate non-tourist activities conferring special activities, rights, privileges and/or responsibilities to foreign nationals in J&KM would be one such case where approval would be required. The state of J & K M could require the Pakistan government to issue special category visas valid only for J&KM, in those cases where the Pakistani government regards a foreign national ineligible for a regular Pakistani visa. The state of J & K M could also refuse any foreign national the right to entry in J & K M if he or she poses a threat to the interests of J & K M. The Pakistani government would not be allowed to stop persons of J & K origin (PJKO) from visiting J & K M. A visa-free regime and the exercise of other rights and privileges in J & K M would be granted to such persons of J & K origin (PJKO).

In the new state of affairs, subject to the principle that foreign affairs are the responsibility of the state of Pakistan, the state of J & K M will have the right to engage on its own with the state of India and the state of J & K S within the parameters of the respectively "defined relationships".

Defence and Security Aspect

In the new state of affairs, defence would be the sovereign responsibility of the state of Pakistan.

In the new state of affairs, the long term objective would be to convert the entire territory of the state of J & K into a neutral, peace zone. The long term objective would be to demilitarize the state of J & K. This can be achieved with the concurrent decommissioning of weapons of the non state armed groups and achieving an enabling environment for demilitarization. As conflict transformation proceeds and once peace has taken hold, a new security paradigm would emerge within the region and new structures would sustain it.

In the new state of affairs, the state of J & K M would complement the Pakistani role in the defence of the borders of the state of J & K M.

In the new state of affairs, the number of troops required to defend the state of J&KM would be mutually agreed between the state of J & K M and the state of Pakistan. Pakistani security contingents in the state of J & K M would not exceed the agreed numbers. Pakistani forces and armaments shall be redeployed to agreed locations and adjusted to agreed levels, and any forces and armaments in excess shall be withdrawn.

In the new state of affairs, locations, land for use of the Pakistani security apparatus would be mutually decided between the state of J & K M and the state of Pakistan.

In the new state of affairs, daily movement of the Pakistani security apparatus within the state of J & K M would be under the escort of the government of the state of J & K M. The movement would occur at a time and by the route which will cause no inconvenience to the civilian inhabitants. The government of J & K M would be informed about the timetable of movement of security contingents.

In the new state of affairs, the Pakistani security apparatus would have no role in the internal policing of the state of J & K M.

In the new state of affairs, the state of J & K M would have the right, to not allow the usage of its territory for any overt or covert hostile actions against the state of India. J & K M would not put its territory at the disposal of Pakistan for military operations against India.

Relationship between the State of J&KS and J&KM in the New State of Affairs

The relationship evolved in the eclectic model aims at psychological unification and integration and sectoral overlaps. The new state of affairs envisages an economic union between the two parts of the state of J & K. The concept of sectoral overlap evolved in the contents section is all an inherent part of the concept of an economic union. The LOC would be reduced to a geographical demarcation and would cease to be a barrier to movement of goods, services, capital and labour. Apart from the economic union the new state of affairs envisages irreversible, interdependent relationship between the two parts of the state of J & K.

The J & K Economic Union

In the new state of affairs, two sub state entities with different sovereignty linkages and constitutional freedom for an independent economic system would jointly pool their respective economic independences to form an economic union. The economic union suggested is at the far end of the types of economic integration currently in practice. This would mean encompassing the entire range of other forms of economic integration i.e. free trade area, custom union, common market. These concepts could however be part of a phased approach leading to full economic union.

In the new state of affairs, the objective of the economic union is to create a single unified economic territory of "J & K economic union" out of two distinct political and geographical territories of J & K S and J & K M. The "J & K economic Union" would be an economically boundary-less J & K.

In the new state of affairs, the two parts of the state of J & K with separate sovereignty linkages would form an economic union viz. the J & K economic union.

In the new state of affairs, the economic union of the state of J & K would be a separate custom territory

In the new state of affairs, the economic union of the state of J & K would mean free movement of goods, services, capital and labour between the two parts of the state of J & K.

In the new state of affairs, internal barriers to trade would be removed while external barriers to trade would be harmonized.

In the earlier relationships between India and J & K S and Pakistan and J&KM, the concept of an independent economic system has been analyzed in detail in the economics aspect section and the external economic affairs section. These rights would be pooled together and the J & K economic union would have the liberty to use the diplomatic sections of India or Pakistan in pursuit of their economic interests, subject to the conditions enumerated in these sections.

In the new state of affairs, the economic union of the state of J & K would jointly coordinate the representation of their interests in the sphere of external economic affairs under the terms set out in the earlier relationships, described above (relationship between J & K S and India; relationship between Pakistan and J & K M) i.e. either of the two states of J & K could utilize the diplomatic offices of either India or Pakistan or both to pursue issues pertaining to external trade with other countries.

In the new state of affairs, the economic union of the state of J & K would adopt common tariffs and barriers against the rest of the world. Tariffs and barriers against India and Pakistan would be the same but different from the tariffs from those against the rest of the world.

In the new state of affairs, the economic union would negotiate a non reciprocal preferential trade agreement with the states of India and Pakistan. This would mean duty free access of goods of J & K economic union origin, into India and Pakistan. Third country goods exported from the J & K economic union into India or Pakistan would attract the normal tariffs.

In the new state of affairs, the J &K economic union would on its own maintain and develop economic and trade relations with all states and regions. The J & K economic union could participate in relevant international organisations and international trade agreements (including preferential trade arrangement), export quotas, tariff preferences and other similar arrangements which might be obtained by the J & K economic union. These arrangements if obtained would be exclusively enjoyed by the J & K economic union.

In the new state of affairs, the J & K economic union could directly source and receive foreign aid, foreign borrowing unless borrowing needs to be underwritten and guaranteed by the state of India or Pakistan. The decision to underwrite or guarantee foreign borrowing by the J & K economic union would solely be the discretion of India or Pakistan.

In the new state of affairs, procedures pertaining to the issue of import financing, realization of export proceeds would have to be worked out and harmonized.

In the new state of affairs, the economic union of the state of J & K would mean harmonization of monetary system. In the current context this would mean acceptance as legal tender both the Indian and the Pakistani currencies.

In the new state of affairs, the economic union of the state of J & K would mean integration of labour markets. Nationals of the state of J & K S and J&KM would be able to move and work freely in both the entities, subject to the production of valid documents of identity.

In the new state of affairs, there would be no restriction on capital flows between the two parts of the state of J & K.

In the new state of affairs, the economic union of the state of J & K would mean harmonization of procedures and policies in various sectors. This entails integration and cooperation in various sectors.

Although the concept of an economic union rarely leaves a sector untouched, some of the changes envisaged would be:

Common banking norms and regulations

Joint development of banking, insurance sector

Cooperation in planning and development

Harmonized fiscal policy to ensure flow of finances to prioritized sectors of the economic union.

Cooperation in Investment

Integration of transport infrastructure to develop inter-territorial transport network and the transport network to India and Pakistan.

Integration of energy infrastructure

Joint exploration of natural resources and energy sector

Harmonization of industrial policy

Harmonization of labour laws

Harmonization of environmental laws and regulations

Joint agricultural market

Harmonization of standards for acceptance of validity of documents and qualifications

In the new state of affairs, all import and export laws, banking laws and regulations, corporate laws, tax laws, excise laws and all other laws pertaining to economic and corporate activity would be the same for both the parts of the state of J&K.

In the new state of affairs, taxes would be levied by J & K S and J & K M as per the common laws in their respective areas.

In the new state of affairs, integration of the transport infrastructure would mean movement of vehicular traffic from the boundaries between Pakistan and J & K M to boundaries between India and J & K S. Free Movement of trade within the J & K economic union would mean that Indian vehicles could ply in J & K M and Pakistani vehicles could ply in J& K S. The onward movement of direct vehicular traffic would depend on the agreed arrangements.

Joint Immigration Control for Movement of Residents of J&KM and J&KS within J&K

In the new state of affairs, travel between the two parts of the state of J & K for the state subjects of the two parts of the state of J & K would be a birth right.

In the new state of affairs, proper identity cards issued jointly, specifically to facilitate travel of the residents of J & K would be required as proof of residence.

In the new state of affairs, the residents would be allowed unrestricted travel trough designated posts on production of identity cards.

In the new state of affairs, the immigration posts specifically for travel of the residents of J & K would be jointly run by the governments of the two parts of J & K.

In the new state of affairs, the residents could travel on foot, by bus, by air or use their private vehicles to travel between the two parts.

In the new state of affairs, the posts would be open throughout the day and night, all through the year.

Joint Management of Natural Resources

In the new state of affairs, there would be a joint arrangement to protect the interests of the state of the J & K in matters pertaining to the utilization and sharing of natural resources.

In the new state of affairs, there would be a joint arrangement to ensure equitable share in the Indus water treaty in accordance with international law pertaining to the sharing of river water.

In the new state of affairs, there would be a joint arrangement to protect the interests of the state in any future treaties pertaining to sharing of river water among India, Pakistan and J & K.

In the new state of affairs, there would be a joint mechanism for the renegotiation of the terms and conditions of the sharing of energy from the existing hydroelectric power stations set up in both the parts of J & K.

In the new state of affairs, there would be a joint body to coordinate funding, utilization, and sharing of hydroelectric projects likely to be set up in the future.

In the new state of affairs, there would be a joint electricity grid with a unified management system.

In the new state of affairs, there would be joint ventures on exploitation and marketing of minerals and other natural resources in J & K.

In the new state of affairs, there would be a joint arrangement for ensuring sustainable resource management concerning natural resources in J & K so that future generations may continue to benefit from these.

Sector Specific Cooperation, Coordination and Consultation

In the new state of affairs, the two parts of the state of J & K would coordinate in various sectors outside the domain of the economic union. They would endeavour to coordinate, harmonize their policies through legislation, or through agreements, or through consultations and evolve joints standards, wherever appropriate in the following sectors:

Joint development of tourism sector

Joint management of demographic data

Joint development of education sector

Joint development of social welfare sector

Joint development of IT and communications sector

Joint development of civil aviation sector

Joint development of health sector

Joint protection of environment

Frequent sporting activities including a joint team in international sporting events and tournaments, where non state entities take part.

Joint cultural activities

Joint forest policy

Joint human rights laws and policies

Joint institutions of scientific research.

Joint research and preservation of archaeological and heritage sites.

Joint development of museums, archives and libraries.

A comprehensive multi modal transport strategy to facilitate cross border movement of commercial and private transport

Integrated border management

Relationship between Pakistan and J&KS in the New State of Affairs

The Indo Nepal Treaty of Peace and Friendship 1950 could be an inspiring model to define the contours of the relationship between Pakistan and J&KS.

In the new state of affairs, the state of Pakistan would acknowledge and respect the current arrangement and formally enter into an independent relationship with the state of J & K S. The relationship would be based on everlasting peace and friendship.

In the new state of affairs, the state of Pakistan, as a token of appreciation for the historical bond exhibited by the people of the state of J & K S would on a non reciprocal basis give the state subjects of the state of J & K S, in its territory, national treatment with regard to participation in industrial and economic development of its territory and would grant concessions and contracts relating to such development.

In the new state of affairs, the state of Pakistan would agree to grant on a non reciprocal basis, to the state subjects of the state of J & K S in its territory, the same privileges that it gives to its nationals in matters of residence, ownership of property, participation in trade and commerce, employment and other privileges of similar nature.

In the new state of affairs, the state of J & K S would grant similar privileges to the nationals of the state of Pakistan but would be able to reciprocate to an extent as defined by the levels of independence of the government of the state of J & K S and subject to Indian interests.

In the new state of affairs, by virtue of the existence of the J & K economic union, the state of Pakistan and the nationals of the state of Pakistan would have the opportunity to invest, trade, setup business in the J & K economic union at par with that of the Indian state and the nationals of the Indian state.

In the new state of affairs, by virtue of the economic union and a formal relationship between Pakistan and J & K S, if the state of J & K S should decide to seek foreign assistance in regard to development of its natural resources or any industrial project in J & K S, the government of J & K S would give first preference to the government of India and second preference to government of Pakistan, equal preference to the nationals of the two countries, provided that the terms offered are not

less favourable to J & K S than the terms offered by any other foreign government or by other foreign nationals.

In the new state of affairs, the state of Pakistan could provide aid and funding to development and infrastructure projects, set up educational institutions, set up hospitals and enter into a range of other similar activities in the state of J & K S.

In the new state of affairs, the accessibility of Pakistani nationals into the state of J&KS would be made more liberal. J & K S would be opened up to the nationals of state of Pakistan. A mechanism would be set in place wherein Pakistani nationals intending to visit the state of J & K S would have to apply to the government of J & K M for entry permits, which would have a joint mechanism with J & K S for processing the entry permits.

In the new state of affairs, residents of J & K S would be allowed unrestricted travel to the state of Pakistan. The joint ID cards issued by states of J & K S and J&KM would be the document needed for travel and stay in Pakistan. They would not need a passport to travel to the state of Pakistan.

In the new state of affairs, the state of Pakistan would have a representative office in J & K S to facilitate the smooth conduct of the relationship mentioned above.

In the new state of affairs, J & K S would have a representative office in the state of Pakistan to facilitate the smooth conduct of the relationship mentioned above.

Relationship between India and J & K M in the New State of Affairs

These measures would be replicated between the state of India and J&KM. The contours of the relationship would be defined by the new state of affairs. As it would in the case of the relationship between Pakistan and J & K S, the scope of the relationship would be realized by mutual consent between India and J & K M.

Constitutional Issues

In the new state of affairs, new constitutions would have to be drafted and signed by the people in J & K S and J & K M. These will be identical constitutions effected in parallel. These new constitutions will define the respective relationships and the power-sharing structure with the governments of India and Pakistan. These new constitutions will also define the relationship between J & K S and J & K M and the joint institutions that would entail. Finally, these new constitutions will establish democratic systems of governance chosen freely by the people of the state. The constitutional process will afford the people a unique chance to evolve a system that is both elegant and enlightened. These new constitutions will enshrine social contracts, defining and guaranteeing the equal rights and privileges all the people will enjoy as well as the responsibilities all the people must fulfil as citizens. While the details and drafting of new constitutions must be left to the people of J & K to decide and as such are beyond the present exercise, a number of constitutional issues are linked to the solution of the J & K conflict.

Territory of the State

Defining the territory of the state is a part of the problem. The current constitutions of both parts of the state are perpetually in a state of denial. Their definition of territories comprises of territories outside their territorial or administrative control. In the spirit of participation in creating the new state of affairs, each state would formally acknowledge the presence of the other state.

The territory of J & K would be in the form of two entities. J & K S would comprise all the territories which are currently under Indian administration. J&KM would comprise all the territories which are currently under Pakistani administration including the Northern Areas.

Citizenship

In the new state of affairs, all those who qualify as state subjects of J & K would be granted citizenship, conferring special rights, in parallel. Every person who is a

state subject of J & K S would be a permanent resident of J & K S. Every person who is a state subject of J&KM would be a permanent resident of J & K M. Residents who have been displaced or migrated from the year 1947 till current date would be able to reclaim their state subject status. Such persons can be a permanent resident of either of the two states i.e. either J & K M or J & K S. The permanent residents of J & K S would be citizens of the state of J & K S. Likewise, the permanent residents of J & K M would be citizens of the state of J & K M.

Citizenship would confer to its holders all the special rights, privileges and responsibilities envisaged in the new state of affairs. These special rights, privileges and responsibilities will be outlined and enshrined in special provisions of the new constitutions of J & K S and J & K M and will be protected and enforced by the respective governments. As participants in the new state of affairs, the governments of India and Pakistan will respect and assist in the protection of the special rights conferred to the citizens of J & K S and J & K M. Citizens of J & K S and J & K M would have the right to own land within both J & K S and J & K M and, in addition, would have all those rights and privileges envisaged in the new state of affairs as enshrined in the two respective constitutions. A locum of special rights and privileges (such as right to own land) will be conferred to persons of J & K origin (PJKO) through special provisions of the new constitutions of J & K S and J & K M.

The permanent residents of J & K S and J & K M would be the special category citizens of India or Pakistan depending on which part of the state of J&K they reside in. Citizens of J & K S would be the special category citizens of India and would enjoy all the common rights of an Indian citizen plus all the special rights enshrined in the constitution of J & K S. Citizens of J & K S would be issued special passports by the Indian government. Citizens of J&KM would be the special category citizens of Pakistan and would enjoy all the common rights of a Pakistani citizen plus all the special rights enshrined in the constitution of J & K M. Citizens of J & K M would be issued special passports accordingly.

This new concept of citizenship is perhaps the most telling indicator of the comparative increase in the rights and privileges of the people of the state of J&K that the eclectic model hopes to achieve.

Institutions

These institutions represent executive, legislative and judicial authority to administrate the state of J & K S and J & K M and conduct the relationship between the state of India and J & K S, and state of Pakistan and J & K M.

The Executive

The head of the state would be an elected person and a permanent resident of the state and elected by the legislature. The executive power of the state would be vested with the head of the state and exercised by him or her either directly or through officers subordinate to him or her in accordance with the constitution of the state. There would be a council of ministers and a head of the council of ministers to aid and advise the head of the state in exercise of his or her functions. The executive would be responsible for administrating the state in accordance with the constitution.

The State Legislature

The Legislature of the state would be elected and would comprise of local citizens. The legislative powers would be vested with the legislature of the state. The legislature could on its own authority enact and amend laws in accordance with the provisions of the constitution. The powers envisaged in the internal aspect, economic aspect, external aspect and defence and security aspect, of the relationships between India and J & K S and Pakistan and J & K M would be legislated, monitored, and planned in the state legislature.

Judiciary

There is a hierarchical system of judiciary in form of courts at various levels. Judicial power would be vested in the courts in the state. The courts would exercise judicial power independently and free from any interference. The courts would decide cases in accordance with the laws of the state. The power of final judgement would be vested in the highest court in the state.

Joint Institutions

Joint Institution to Conduct Relationship between J&KM and J&KS

This institution would bring people with executive and legislative responsibilities in J & K S and J & K M together in the form of a joint institution.

A joint institution would have to be established between the governments of the two states to conduct a relationship in accordance with the proposed constitutional contours of the partnership. The institution would with joint legislative consent frame a hierarchical structure of a mix of political and bureaucratic institutions needed to run the joint operation of various sectors.

Any proposals or change within the ambit of the relationship would have to be ratified by the respective legislatures. The institution would be a joint forum for policy formulation, strategic planning and monitoring of the joint management of the J & K economic union, and various sector specific joint initiatives between the two parts of the state. Given the vast scope for joint management including a joint economic system, this institution would be particularly of great importance.

Joint Institution to Conduct the "Defined Relationship between the State of Pakistan and J&KS".

This institution would bring people with executive and legislative responsibilities in Pakistan and J & K S together to form of a joint institution.

The joint institution would conduct the relationship between the state of J & K S and the state of Pakistan. The joint institution would have representative offices in Islamabad and Srinagar.

Joint Institution to Conduct the "Defined Relationship between the State of India and the State of J&KM".

This institution would bring people with executive and legislative responsibilities in India and J & K M together to form a joint institution.

The joint institution would conduct relationship between the state of India and the state of J & K M. The joint institution would have representative offices in New Delhi and Muzzafarbad.

Legality and Constitutional Sanctity

The model evolved above presumes that it will be accorded a legal and constitutional status. This would require granting the changes a constitutional passage in the Indian and the Pakistani parliaments. Likewise, a process would have to be worked out for the drafting and signing of new identical constitutions by the people of J & K S and J & K M. Such a process, embodying the creation of a new social contract, would have to be legitimate in the eyes of the people and achieve the widest possible participation in and acceptance by the people. A bigger constitutional question is who would provide this type of constitutional ratification in the states of J&KM and J&KS. Regarding the existing institutional mechanisms, the present legislatures in both the parts are not wholly representative neither does the legislature have enough powers. Many political parties do not contest the elections to the state legislatures due to ideological reasons. Are new constituent assemblies a prerequisite or could the existing legislatures be made representative and empowered enough to be able to handle the constitutional process? This is something which would have to be sorted out by mutual negotiations.

Interim or Final - Resolution or Solution

It is important to make the nuanced political distinction between the terms "resolution" to the Kashmir conflict and a "solution" to the Kashmir conflict. Resolution is a more of a long-term concept and would mean settling of claims of all the actors, once and for all. Solution is a more of a short-term concept, whose aim would primarily be to set the stage for an era of uninterrupted peace and reconciliation of realities. Resolution would need the explicit withdrawal of claims of all the parties. This is an improbability at this stage. Decades of vicious rhetoric, hostile folklores, violence are the most unlikely settings for a resolution. A short-term concept is most likely to be unacceptable to the state of India. A trade off would have to be established even in defining the interim or final nature of the model.

It is better to freeze the claims for an unspecified period. An inspiring model could achieve a permanent state of political equilibrium. The onus is especially on the state of India to adopt a liberal approach and invest liberally in the formulation of a model which would strengthen stakes in the transformation of the solution into a resolution in the long-term. A vision aimed at a post solution era of economic prosperity, peace

and a state of civility are the essential inputs in deciding the ultimate finality of the solution. If parameters of irreversible interdependence between the peoples of all the regions are institutionalized the short-term solution is most likely to overlap with a long-term resolution. The decisive factor would be the ability to visualize the optimal contouring of the post solution era- optimal enough to achieve permanency. Permanency is solely a derivative of the degree of fulfilment of aspirations in the post solution era.

Property and Right to Return

Large scale migrations have taken place since 1947. Residents of J & K ended up in J & K M, J & K S, India, Pakistan and elsewhere. Migration has mainly taken place to escape violence. In the process thousands and thousands were uprooted from their ancestral lands, leaving behind properties. The new state of affairs envisages a right to return for all those people who have migrated in the post 1947 era. They can return and resume their original domicile. This would be subject to the condition that the returnee would have to be domiciled in one place only i.e. he or she could be a resident of either J&KM or J & K S. Irrespective of the right to return; people who left behind their properties would have the right to reclaim their properties. A system would have to be worked out to either hand over the possession of the properties to the rightful owners or their heirs or have a system of compensation in place.

Phased Implementation

The model envisages a phased implementation over an agreed period of time. It could start with India and Pakistan establishing a relationship based on the new power sharing structure with J & K S and J & K M. The relationship between J & K S and J&KM could follow next. And finally the relationship between India and J & K M and Pakistan and J & K S could be made operational.

Apart from the traditional factors of mutual trust and security, logistical and institutional factors would define the pace of implementation. This would require institution building mainly across the two parts of the state of J & K, in order to be able to mange the scope of changes envisaged. The earned sovereignty approach deals in detail with the importance of institution building and the phased approach of ceding

powers to sub state entities. It entails conditional and progressive devolution of sovereign powers from a state to sub state entity. In the perspective of our model it would mean a multi stage process entailing institution building, phased process of sharing of sovereignty, up to the final stage where the pre-determined extent of sharing of sovereignty or the constraints on sovereignty are met. This concept has been relatively detailed in the chapter 5C.

Consent

Any solution evolved would have to be put before the people of J & K for ratification. The process of ratification adopted in the Good Friday Agreement could be emulated. This would mean ratification in J & K M, J & K S and an all-J & K ratification.

Finality

Finality would develop as the eclectic model is put into operations towards its totality. The implementation of all the constitutional and institutional measures entailed would, by their very nature, achieve a structural permanence for the new state of affairs. The new state of affairs would have the constitutional protection of four constitutions, i.e. that of India, Pakistan, J & K S and J & K M. Furthermore, the respective constitutional provisions shall enshrine commitments that no party could unilaterally alter the new state of affairs. Any structural legal adjustments or changes with a bearing on the new state of affairs would require concurrent approval by all four legislatures in India, Pakistan, J & K S and J & K M.

It is our belief that the eclectic model and the new state of affairs that it seeks to bring about is achievable nationhood for the people of J & K.

Chapter 5B

Role of Economics Post Solution

J & K Economic Union – Blending Politics, Economics, Psychology

●J & K Economic Union – The Psychological and Political Context ●J & K Economic Union – The Economic Context ●Economic System ●Size of the Market ●Infrastructure – Development and Integration

●Thrust Areas

►Services Sector ►Industrial Sector ►Energy Sector / Details of Basic Economic Analysis of the Energy Sector in J & K S ►Agriculture and Traditional Sectors

Role of Economics Post Solution

Psychological and Political spill over

It is a widely accepted fact in the academic literature, pertaining to conflict resolution that the implementation phase is perhaps the most precarious phase in the process of conflict resolution. Economics has a central role in the post solution phase, in our model. The role of economics in the eclectic model stretches far beyond the domain of traditional economics and straddles across the political and psychological aspects of the conflict. The concept of an economic union as envisaged in our model impacts psychological, political and economic spheres. There is an economic outcome, but there is also a political outcome and a psychological outcome.

A full economic analysis is beyond the scope of this document. We however try to put forward the basic outline of the concept of a J & K economic union within the multi contextual setting of politics, economics and psychology.

J&K Economic Union- Blending Politics, Economics and Psychology

J & K Economic Union- the Psychological and Political Context

The political and the psychological impact of the economic union would have to be analyzed in the context of the J & K conflict, decades of hostility and lack of a unanimous alternative in terms of resolution. The current status is characterized by an iron curtain between the two regions. There is complete absence of civilized interaction or civilized co existence in the region. The economic union is a response to a conflict situation and has to be viewed in the perspective of conflict resolution.

The J & K economic union is likely to have inherent in it, elements of psychological union and political union. **The concept of an economic union is a process of unification of the two parts of J & K by producing a "single economic entity" out of "two distinct geographical and political sub-entities", having separate political linkages with two separate sovereign entities.** A single economic entity would mean free flow of capital, trade, services, labour. Economic operations across the LOC and the removal of barriers to movement are perhaps the most profound visible indicators of change- psychological unification. This could be the start of a process of psychological unification which could hopefully intensify with the passage of time. So far the focus has been on the absence of unification between the two parts of J & K, exacerbated by the lack of any interaction between the two parts. An operational economic union shifts the focus on visible aspects of unification-interaction, trade, free flow of capital, movement of goods and services, labour. The concept of the two sub entities being distinct politically and geographically loses its relevance in an era of increased interaction across various spheres. Perceived unification achieved in an economic union makes the demands for real unification less relevant.

In the political context, the short term impact would be opening up of the J&K S territory to the Pakistani citizens for trade and social and cultural interaction. The Pakistan dimension gains accessibility through the state of J&K M into the state of J&KS. From a period where the state of J & K S was practically inaccessible to people of Pakistan to a period- where Pakistan is accessible to citizens of J & K S; they can trade, set up businesses and mutually enter into a range of commercial, cultural, social activities. Transformation of J&KS from a forbidden zone to an accessible zone signifies great political change in the region.

The long term political impact of the J & K economic union is related to the stability of the arrangements. It will be such an interconnected era that spill over effects on to other spheres are inevitable. And this would translate into establishment of irreversible interdependent relationships across various spheres of economy and society.

Political stability demands institutionalization of interdependence to a degree of irreversibility. Elements of irreversibility can be embedded by moving beyond the domain of governmental policies into the domain of peoples of the region and making interdependence inherently irreversible and that would mean making the interdependent relationships between individuals, corporate entities economically irreversible. Establishment of economic objectives of economic gain, trade among

individuals, corporate entities across various economic sectors signifies a diffusion of economic interests across the peoples of the region and vastly broadens the constituency of the stakeholders of stability of the arrangements. This process would set the stage for long term institutionalization of irreversible interdependence.

Application of economics in pursuit of the concept of "economics facilitating politics" is not a unique or new experiment. Application of this concept in the South Asian region has been delayed. Post World War II. GATT was seen as an instrument of promoting world peace. This helped to bring countries like Germany back to the world economic system. The familiar example of the European Union where political rivalries between member states dated back to centuries and yet economics did play a facilitating function of bringing these states together in pursuit of economic objectives with spill over effects spreading to other sectors at a very fast pace.

J & K Economic Union- The Economic Context

The economic impact of an economic union confined to two parts of J&K is not going to be very high. The potential for trade volumes between the two parts of J & K is likely to be very limited. At the very best it would mean increase in trade opportunities of traditional products of J & K S, the volumes of which are least likely to be more than US $ 20 million. The combined economic clout of both the parts would not mean significant changes in employment, industrialization or investment. Confining the concept of an economic union to two parts of J & K at best serves limited political and psychological objectives.

The post solution role of economics envisages the transformation of the conflict area- away from the current economic dependence to economic independence. The transformation is essential to sustain a political solution short of the target. The independence of economics is essential to offset the political vulnerability arising out of the perceived loss in politics in terms of a solution being short of target. Although not exactly similar, but example of economic cooperation between Argentina and Chile is an example. In 1978 both the countries, involved in twenty four territorial disputes mobilized their armed forces for possible war. And by 1999 the two countries had developed an era of economic cooperation, which saw the blend of Argentinean energy and Chilean capital being optimally utilized.

The economics of the J & K economic union can be optimally realized by broadening the contours of the concept of J & K economic union. This would mean a long term concept of transforming the J & K economic union as- a trade

friendly area with liberal laws; a nodal trading and production base, designed to service both the Indian and the Pakistani economies as well as international markets. Realization of this concept makes economies of J & K S and J & K M and the J & K economic union, inherently viable. The traditional concept of a free trade area is that of a port. Envisaging the creation of a free trade area out of a land locked, impoverished area with primitive infrastructural facilities does have its inherent drawbacks. But the emergence of the services industry, prospects of a widened market base by virtue of being able to service both the Indian and the Pakistani economies, possible integration and up gradation of infrastructure and the existence of a free trade, tax heaven, within the "still centralized" Indian and Pakistani economies does provide great potential.

The J & K economic union does have the capability of becoming an island of excellence- in areas like banking and finance; other range of service industries i.e. tourism and a shopping destination, by virtue of friendly levels of custom tariffs; software development and centre for media activities related to post production. The J & K economic union could also become a production base. Industrialization has been a problem across both sides of the LOC, mainly because of the small size of the market. Economies of scale can be realized by the prospect of a wider serviceable market base.

The regional and international corporate response to the J & K economic union is pivotal for its success. Far end of optimism would mean internationalization and regionalization of the services sector and the manufacturing sector. It could mean flow of foreign direct investment. Vertical and horizontal integration could see the emergence of regional corporate entities- production facilities spread across India, Pakistan and the J & K economic union. A deregulated, trade friendly economic regime in the middle of India and Pakistan could translate into an economic miracle.

However the scope of deliverance would be subject to various factors, primarily the extent of facilitation by India and Pakistan. Economics would have to subordinate political and security concerns; there would have to be a reorientation from politics and conflict towards economics; a comprehensive regional political economy construct would have to emerge out of conviction.

We analyze some of the basic parameters of the concept of a successful J&K economic union:

Economic system

Size of market

Infrastructure- development and integration

Thrust areas

Economic System

The whole concept of an independent economic system revolves around the concept of free trade. If the J & K economic union is to replicate laws in India or Pakistan, it loses its economic relevance. The economic system has to be projected as an alternative. Our concept of economic union is defined by deregulation- low or no custom duties, liberal banking and finance laws, extremely low levels of taxation. Extending the concept to the independence in the internal affairs in the new state of affairs, laws on communication, publishing, civil aviation and other relevant sectors would have to be trade friendly and liberal. The economic system and the other overlapping systems have to be designed in a manner so as to provide ideal settings for the evolution of a liberal economic base with integrated and internationally acceptable levels of infrastructure.

Size of the Market

As per our model, goods of J & K economic union origin would have duty free access into India and Pakistan. This means that the J & K economic union would be able to service both the Indian and the Pakistani markets. Apart from that compared to the existing situation two parts of J & K would be able to service each other's markets.

So the synergistic size of the market is 1 + 1 = 4. The base i.e. union of two parts J&KS and J & K M would be able to service four markets- India, Pakistan, J & K M and J & K S.

Infrastructure- Development and Integration

Massive investments would be required to transform the current state of primitive infrastructure on both parts of J & K, into levels of infrastructure compatible with the vision of the concept of economic union. Infrastructure is an all encompassing concept and would mean development across a whole lot of sectors. Specifically transport,

energy, communications would have to be the focus areas which would need to be developed.

The second aspect would be the integration of infrastructure across the two parts of J & K and the capacity to levels of efficiency and capacity so as to be able to serve as a base an integrated infrastructural base to service the Indian and Pakistani markets.

Thrust Areas

We have identified some thrust areas which we feel could propel economic growth in the future. The economic system and infrastructure needs to be modelled in pursuit of achieving excellence in these areas.

Services sector

Industrial sector

Energy sector

Agriculture and the Traditional Sectors

Services Sector

In the long term the main economic viability of the J & K economic union is mainly going to be derived from the services sector. The Kashmir valley is a beautiful tourist resort and even in times of conflict is able to attract thousand of visitors. However the emerging scope of the services sector is much beyond tourism and the concept of a regime of liberal laws, along with easy accessibility of Indian and Pakistanis could make the region emerge as a centre for services sector. The scope in the services sector depends on liberal laws, accessibility to latest technology and development of internationally acceptable levels of infrastructure.

The J & K economic union could become a tourist and a shopping destination. Low custom duties and a free trade regime could mean the availability of a range of merchandise from across the world. Liberal trade regime would mean more private sector participation and access to cheap finance for developing the tourist infrastructure. The economic union could be groomed to come up as a centre for media and film related post production activities. The economic union could come up as a centre for IT, software development, Business Process Outsourcing (BPO), and a host of other activities related to the services sector.

Liberal banking laws, different from that of India and Pakistan could transform J&K economic union as banking and finance centre. The prospect of a base servicing both the Indian and Pakistani economies could stimulate investment. And the source of investment would likely be more than Indian or Pakistani firms. The J & K economic union could host a joint stock exchange. This could extend into J & K economic union becoming a trading hub in South Asia, a hub of buyers and sellers. Common markets of various sectors set up in the economic union could extend to becoming common markets for the entire South Asian region. The concept of the J&K economic union in terms of the service sectors would mean internationalization and regionalization of the contours of the services sector.

The source of competitive advantage on which we will build our whole concept of a successful services sector is liberal trade laws, dismantling of barriers to travel and the possibility of servicing both the Indian and the Pakistani economies.

Industrial Sector

Industries have never succeeded in either of the two parts of J & K. The primary reason has been the puny size of the market and thereby failure to realize economies of scale and very high transportation costs of raw materials. The prospect of an economic union with liberal laws and potential to service both the Indian and Pakistani markets could change all that. The advantage of goods of J & K economic union origin having duty free access to Indian and Pakistani markets could mean setting up of production plants in J & K. Patterns of vertical or horizontal integration could emerge across the region to take advantage of the dual accessibility.

J & K S already has a relatively basic industrial infrastructure. While the Kashmir valley is host to a large number of small scale and handloom industries, the Jammu region has a relatively well developed industrial sector. In the event of industrialization the regional pattern is most likely to continue across both sides of the LOC. Jammu and Mirpur regions are likely to emerge as industrial centres. Jammu is very closely located to the Indian and Pakistani market, while Mirpur is closely located to the Pakistani market.

Energy Sector

The energy sector should have been a strong variable in scripting economic growth in the region. The state of J & K across both parts of the LOC has been bestowed with

abundant hydro power generation potential. It should have been an energy surplus state, exporting energy. The converse exists in practice. The state of J & K S is energy deficit and is dependent on India to fulfil its energy demand.

A variety of factors mostly political and partly economic are responsible for this situation. The first factor is that the state of J & K across both sides of the LOC does not possess economic sovereignty over its natural resources in the current status of relationship between either, India or Pakistan. The hydro electric projects built in the state of J & K across the LOC, by India or Pakistan are under central control. The state of J & K across the LOC is compensated by giving a percentage of the output as royalty. The second factor is the Indus Water Treaty between India and Pakistan, governing the sharing of river water. This treaty has been signed in exclusion of the people of J & K. The treaty was signed in 1960 and was a macro sharing arrangement across Punjab and the J&K region. This particular treaty is not in the interests of the people of J & K. Most of the current hydroelectric projects in J&KS are caught up in disputes, as Pakistan has objected to these projects on various grounds. The third aspect pertains to those projects which have been executed by the state government. Most of these projects have been mired in administrative inertia and allegations of corruption. Work on some of the projects has been on for decades and completion is nowhere in sight.

We have tried to do some basic economic analysis of the potential of the energy sector in J & K S. This gives an indication of the vast potential of this sector in the economic building of this region. The figures and the data are based on the analysis of the J & K electricity division in response to our questionnaire.

- The total demand for the state of J & K S is approximately 1615 Mega Watt. Out of this the state has an installed capacity of only 475.15 MW and the available capacity is 337.15 in summers and 207.6 in winters. This includes 140 MW from the gas turbines.
- Power generated apart from the above mentioned installed capacity is operated and run by and run for the central government.
- To meet this shortfall of demand J & K S has to pay approximately 1000 crore every year to procure energy from the central government.
- The total hydroelectric potential of the state of J & K S is 20000 MW, while adhering to the Indus water treaty and 25% more if the treaty were not in place.

- The total expected revenue of export of 20000 MW of energy would have been between 15000 to 22000 crores per year at the current prices.
- The total investment needed to build hydro electric projects with a capacity of 20000 MW generation is approximately 120000 crore.
- Out of this about 60% is the approximate percentage that would feed into the local economy.
- The expected employment potential in hydroelectric projects generating 20000 MW of energy is 120000 skilled and unskilled workers.

Details of the Basic Economic Analysis of the Energy Sector in J&KS[1]

Power Generation potential in J & K S, if no treaty was in place and the state was free to exploit its natural resources

The approximate hydropower generation in the J & K S 20,000 Mega Watt, taking in to consideration the restrictions due to the Indus water treaty. If however, no treaty was in a place the potential is estimated to increase by at least 1/4th i.e. by 5000 MW at the very least.

About 16,243 MW is already identified for power generation projects which have been investigated and found viable both technically and economically on river Indus, River Jhelum, River Chenab and River Ravi.

The Indus water treaty, however, does not restrict the storage on river Ravi.

The break up of the hydel potential thus is:

S.No	Name of River	Hydel Power generation Poteintial identified
1	Indus	2066.81 MW
2	Jehlum	3576.55 MW
3	Chenab	10375.00 MW
4	Ravi	225.00 MW
	Total	**16243.36 MW**

98.6% i.e over 16,000 MW hydel power potential is on the rivers Indus, Jehlum & Chenab governed by the Indus water treaty.

Power generation of J & K S, while adhering to the Indus water treaty

About 20,000 MW as mentioned above.

The Indus Water Treaty restricts storage capacity (reservoirs) which can be created on the river systems of Jehlum, Chenab & Indus. That means project dependent upon the actual water flow in the rivers (run-of-the river) can only be constructed. Rough estimates indicate that total energy loss on the Uri and Salal Hydel projects alone on this account is of the order of 44% and 15% respectively.

Tulbal navigation lock, a victim of this treaty, would have resulted in better exploitation of lower Jehlum Hydel projects and Uri-I especially during winters. Absence of storage discharge has resulted in an immediate loss of 50% capacity which otherwise could have been installed.

Scope for additional capacity after creation of storages in the upper reaches of the river basin on existing/under construction/proposed schemes:-

S.No	Name of Project	Present capacity (MW)	Additional Scope (MW)	Total (MW)
1	Jehlum basin			
	Uri-I	480.00	480.00	960.00
	Uri-II	280.00	280.00	560.00
		760.00	760.00	1520.00
2	Chenab Basin			
	Baghlilar	450.00	450.00	900.00
	Sawalkot	600.00	600.00	1200.00
	Dul Hasti	390.00	390.00	780.00
	Pakuldul	1000.00	1000.00	2000.00
	Rattle	170.00	170.00	340.00
	Total	**2610.00**	**2610.00**	**5220.00**
	Grand Total	**3370.00**	**3370.00**	**6740.00**

However, the storage on these basins is governed by the Indus Water Treaty which has provision for creation only of storage as:-

S.No	Name of Basin	Provision of Storage
1	Indus	0.40 MAF (Million acre feet)
2	Jehlum	1.50 MAF
3	Chenab	1.70 MAF

Present Power Generation capacity in J&K S

There is a difference between installed and available capacity.

The actual available capacity varies between winters and summers. In summer the river discharge is high and consequently hydel capacity is available (subject to availability of machines). But the available hydel capacity goes down in winter normally by at least 66% (approx.)

The installed and available capacity (water availability) is roughly given in the following table:-

S.No	Name of Power House	Installed Capacity (MW)	Avaliable Summer	Winter
A	Jehlum River Basin			
1	LJHP	105	100	40
2	USHP I	22.60	12	5
3	USHP II	105.0	35	0
4	GBL	15.0	8	3
5	Karnah	2	1	0
	Sub-Total	249.60	156	48
B	Chenab Basin			
1	Chenani I	23.30	15	8
2	Chenani II	2.0	2	0.60
3	Chenani III	7.0	7	3
4	Rajouri	0.70	0.6	0
	Sub-Total	33.0	24.6	11.6
C	Ravi Basin			
1	Sewa III	9	9	8
	Sub-Total	9	9	8
D	Indus Basin			
1	Iqbal Bridge	2.75	3.75	0
2	Hunder	0.40		
3	Sumoor	0.10	0.80	0
4	Buzgoo	0.30		
5	Satkna	4.0	3	0
	Sub-Total	8.55	7.55	0
Total Hydel		**300.15**	**197.15**	**67.6**
Gas Turbine		**175.00**	**140**	**140**
Grand Total		**475.15**	**337.15**	**207.6**

Gas turbines being very expensive are rarely used and then only to meet the energy requirements during extreme shortages for peak time.

Present demand for power in J&KS.

The demand for energy in 2003-04 was recorded as 8600 Million Units (Mus) i.e. an average of 235 lac units/day. The peak demand in MW, i.e maximum load demand, was recorded at 1615 Mega Watt.

Tariffs paid by the state of J&K S to procure power from New Delhi.

The cost of purchase of power from outside the state is a derivative of a complex mix of parameters, both technical and others, fluctuating with the time of the day and system frequency. An average is worked out for the day, week, month and the year as needed. Total power purchase for the year generally is a net figure accounting for the energy outflow as well.

The total amount paid by the state on account of energy bills is as follows:

Year	Amount in IRS
2001-02	**IRS 879.02 crores**
2002-03	**IRS 1280.87 crores**
2003-04	**IRS 1390.52 crores**

Conversion of energy in to revenue

One Mega Watt (MW) means 1000 kilowatts, One Kilo Watt (in terms of load) is equal to 10 lamps of 100 watt each.

When 1 KW load (i.e. equivalent of 10 lamps of 100 watt each) is used (ON) for one hour, it is called a Kilo Watt Hour (KWh) or a unit of electric power. Electric energy consumed is measured as KWh (units) of energy through electric energy meters.

Now when 1000 KW (1 Mega Watt) load is used for one hour, it consumes 1000 units of energy.

So 1000 MW would be 1,000,000 KWs (One million KW) and in one (1) hour, this load shall consume 1 million KW * 1 hr = 1 million Kilowatt Hrs = 1 million units or 1 Mu.

Now suppose we export this (1 Mu) energy for at least 8 hours / day and for all the 365 days of a year,

i.e. = 1 * 8 * 365Mus

= 2920 Million Units export.

Our recent average rate of energy purchase from outside the state is about Rs 2.56 (in 2004-05 till date)

After applying the same rate:

The export of 2920 Mus energy @ Rs 2.56 / Unit will earn a revenue of about Rs 7475 million.

i.e. = Rs 747.5 crore (for exporting 1000 MW for 8 hrs a day round the year)

and Rs 1121.28 crore (If we export 1000 MW for 12 hrs a day round the year).

So the potential for revenue even when the Indus Water Treaty is in place would be in the range of IRS 14950 crore to IRS 22425.6 crore. In dollar terms it would be between three to four billion dollars.

Infrastructure cost of putting up of hydro electric projects.

Hydro Electric power projects are highly capital intensive and are generally located in difficult mountainous terrain, being dependent upon the "head" of water to create water pressure to run large water wheels (turbines) which in turn, being connected through shafts run electricity generating machines.

Although the infrastructure establishment cost is location specific, in very general terms the recent cost of putting up hydel power projects in J & K S, works out to around Rs 6.0 Crore per Mega Watt. For 1000 Mega Watts it would proportionately mean around Rs 6000 crore.

Approximate investment required for generation of 20000 MW units of energy would be 120000 crores.

Impact on local economy

A large Hydro electric project charges the locale drastically by infusion of men and materials, opening up the hinterland and creating demand of both manpower and supplies which in turn impacts favourably upon the local economy pumping as much as 70% of the total project cost. On an average, it is seen that about 60-65 % of the project cost is spent locally- especially on all civil works including compensations for land acquired and un-skilled employment etc.

Employment potential in numbers to run the Hydro electric projects

Every hydro project has vast potential for employment for engineers/ skilled & un-skilled personnel, besides support staff, depending upon its size, type and location. In developed countries, only very few highly skilled personnel are developed to run comparatively large power projects. In our part of the world, the emphasis now is towards optimal efficiency on the minimum requirement basis. On an average in India, every one MW capacity may need about 8 skilled/un-skilled personnel. This means a total employment potential of skilled and unskilled workers for 20000 MW would 160000.

Agriculture and the Traditional Sectors

An exploration of the agriculture sector, including horticulture, floriculture, etc., and the traditional sectors, including handicrafts, etc., is beyond the scope of this document. These sectors are significant both in terms of the cultural attachments, the employment they generate, as well as the bottom lines they represent. In the new state of affairs, and the new markets they will create, these sectors will be thrust areas and due attention towards them will spur economic growth. The new market forces would offer new economic opportunities and would spur modernization, privatization, commercialization, and/or other needed changes within these sectors.

1) Details have been provided by J & K Electricity department in response to our questionnaire.

Chapter 5C

Sovereignty Context

The Concept of Sovereignty

Dilution of the Concept of Sovereignty

Conflict Resolution and Sovereignty

Evolving Concepts of Sovereignty and J & K Conflict

Earned Sovereignty Approach

Earned Sovereignty Approach and J & K Conflict

Tracing "Solution" on the "Sovereignty Map"

Sovereignty Context

The Concept of Sovereignty

The traditional concept of sovereignty as a political thought, traces its roots to the Peace of Westphalia in 1648. Evolving historically over a period of time, the conventional concept of sovereignty manifested in the form of modern day state structure and international assemblage of states. Although it is difficult to confine the concept of sovereignty to a single definition, some common attributes have evolved to define the contours of sovereignty. The traditional concept of sovereignty is rooted in the concept of, "supreme authority within a territory". It is a modern notion of political authority.[1]

The concept of sovereignty is embedded in the state. While the modern polity is called the state, the fundamental elements of authority within it constitute the concept of sovereignty. The spread of the concept of sovereignty further encompasses the concept of the holder of sovereignty, the absoluteness of sovereignty and the internal and external dimensions of sovereignty. Power is legitimized in this concept by conceptualizing the concept of authority as being supreme. Territoriality is the instrument to define the members of a community. So the definition finally transforms to supreme authority within a defined territory. The internal and external dimensions of sovereignty pertain to supremacy of authority within the territory and inherent immunity from external interference. Steven Lee in a paper titled "A Puzzle of Sovereignty", tries to demystify the concept of sovereignty. Making a distinction between internal and external sovereignty, Steven Lee identifies internal sovereignty with "supremacy within" and external sovereignty with "independence from".[2]

This is the most basic definition of the contours of the concept of sovereignty. The traditional perspective is too utopian to have actually held in practice. Under the conventional view, an entity qualified as a sovereign state if it had a territory, a population, a government and formal juridical autonomy[3]. If an entity did not qualify as a sovereign state, it was deemed a dependent or subordinate territory of a sovereign state. Thus, an entity was either sovereign or it was not. There was no such thing as an in between status such as "earned sovereignty"[4]. "A sovereign state is accepted as a

juridical equal of other states. It is entitled to political independence, territorial integrity and virtually exclusive control and jurisdiction within that territory"[5].

Dilution of the Concept of Sovereignty

"Contrary to the conventional view, since the dawn of the state system 355 years ago with the Peace of Westphalia, very few states have actually possessed full juridical autonomy"[6]."Rather most states in the world might more accurately be characterized as quasi sovereigns"[7]. The concept of a quasi sovereign state has been in existence for a long time. Several quasi-sovereign states were permitted to ratify treaties and participate alongside sovereign states as full members of International organisations. India, for example, was a member of the league of nations and a signatory of the Versailles Treaty even though it was still a colony of Britain[8]. Later, both India and the Philippines were permitted to serve as founding members of the United Nations (U.N.) even though they did not become formally independent from Britain and the United Sates until 1946 and 1947 respectively[9]. Andorra, which is a tiny territory nestled in the Pyrenees Mountains between France and Spain, became a member of the United Nations in 1993 and the council of Europe in 1994 even though France and Spain have control over its security affairs and retain the right to appoint two of the four members of its constitutional tribunal[10]. The "freely associated states" of Micronesia, the Marshall Islands, and Palau have each attained U.N. membership although the United States continues to maintain control of their national security policy[11]. And Hong Kong, at the time a British colony and currently part of China, became a founding member of the World Trade Organisation[12].

The traditional concept of sovereignty seems to be in a state of evolution. Formal contemporary challenges to the concept of sovereignty emerged from a variety of sources and have led to the circumscription of the concept of sovereignty. The earliest dilution can be traced to the signing of the Universal Declaration of Human Rights, followed by European integration, economic globalization and the formation of supranational institutions. The emerging concept of sovereignty is contradictory to the traditional concept. While the traditional perspective views sovereignty as a whole concept- indivisible, monolith; the evolving and emerging concept of sovereignty views it as divisible, shareable, multi dimensional.

The increasing tendency of economic, military, regional alliances are signs of voluntary ceding of elements of sovereignty in pursuit of common objectives. States have ceded away portions of their juridical autonomy through treaties. Thus, the

member states of the European Union can be deemed quasi-sovereign, in that the decision of the European court of Justice and the European court of Human Rights have supremacy and direct effect within their territory. Similarly, any state that borrows money from an International financial institution such as International Monetary fund or the World Bank is subject to conditionality requirements that involves issues of what the World Bank terms "good governance"[13]. Although these International commitments may be viewed as a manifestation of the exercise of the sovereignty, the ultimate effect is in fact a diminution of the traditional attributes of sovereignty.

Two set of definitions on sovereignty highlight the divide:

Sovereignty either is or is not[14].

"It is undeniable that the centuries old doctrine of absolute and exclusive sovereignty no longer stands, and was in fact never so absolute as it was conceived to be in theory."[15]

The two statements defining the same concept provide an insight into the differing perceptions of sovereignty. Irrespective of the formal perceptions of international law, sovereignty has in practice been shared, diluted or constrained in the range of federal solutions in place around the world.

Conflict Resolution and Sovereignty

In a world increasingly characterized by self determination movements, the traditional view of sovereignty has constrained the scope of conflict resolution and transformed it into an eternal battle of claims and counter claims. The lack of sufficient legal sanctity accorded to the diluted versions, of evolving concepts of sovereignty has meant little or no room for manoeuvrability in the realm of sovereignty, in conflict resolution. This has manifested in armed resistance movements across the globe in pursuit of self determination and repressive regimes reacting with brute force, often indulging in mass human rights violations. Although internal sovereignty is not always a guarantee to cocoon the crimes of the violating states, application of the concept of international intervention on the grounds of human rights violations is still an exception rather than the rule. International

intervention is a subject of international interests of fellow states rather than strict concern for human rights violations.

There seems to be a visible gulf between perception and reality. While the traditional perception of sovereignty as being indivisible and monolithic still constitutes the formal, legal defining parameters of sovereignty, in reality states have states have entered into a range of accommodative arrangements with sub state entities, formally devolving power in some fields, thereby formally diluting the extent of exercise of sovereignty over sub entities. The federal and the confederal solutions already discussed in the chapter on empirical evidence are in essence formal evidences of accommodative sharing of power and redistribution of sovereignty. Broadly, the accommodative solutions have come into existence either to prevent conflict or to resolve conflict.

There does seem to be a pressing need to formally incorporate the evolving concepts of sovereignty in the realm of conflict resolution. "While the proposed recognition of the status of intermediate sovereignty has not yet been extensively accepted in International law, the quasi-sovereign character of many of the states in the contemporary International system and many states in the past, suggests that solutions to issues of self-determination should not require rigid conformity with the principles that are conventionally and misleadingly associated with sovereignty"[16].

Evolving Concepts of Sovereignty and J & K Conflict

Ironically, the evolving concept of sovereignty is historically wedded to the J & K conflict. Much before the academic debate on the evolving concepts of sovereignty peaked at the current levels; the instrument of accession which is the single most important legal document from the Indian viewpoint of accession of J & K to the state of India, explicitly and unambiguously propounds the dual or possibly multiple dimensions of sovereignty.

We reproduce parts of the deed of accession signed by the Maharaja, which became the eventual instrument for the state of India to fortify its hold on a part of J&K.

"I----,Ruler of Jammu and Kashmir State, in the exercise of my sovereignty in and over my said State do hereby execute this Instrument of accession---"

"Nothing in this instrument affects the continuance of my sovereignty in and over this State, or, save as provided by or under this instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State". (State refers to J & K)

The ruler exercises his sovereignty to accede to India, subject to some conditions. One of the conditions in the context of sovereignty is- a clear expression of accession on the conditions of existence of a sovereign sub entity (J & K) within a bigger sovereign entity (India). If we compare this concept of sovereignty with the current debate on evolving concepts of sovereignty, it clearly hints towards the dichotomy between internal and external sovereignty or a degree of sovereignty or an extent of sovereignty. The Maharaja in the deed of accession attached a schedule, ceding subjects of defence, foreign affairs and communication to the state of India. In the sovereignty terminology- the Maharaja envisaged internal sovereignty including economic sovereignty for the ruler of the state of J & K, while ceding external sovereignty to India. The terminology was intentional, was accepted by the state of India and intentional nature of the terminology was endorsed by the use of the terms power, authority and rights of the ruler. These terms reinforce the concept of a degree of sovereignty for the ruler of the state of J & K.

Irrespective of the current academic debate over the evolving concepts of sovereignty, the multi dimensional concept of sovereignty is legally an inherent part of the J & K conflict, by virtue of history. It is unfortunate that the current need to revise history and analyze the sovereignty in the context of conflict resolution is in reaction to an armed struggle which has so far resulted in thousands of deaths, pain and suffering for the people of J & K. The distortion of the historical equilibrium is mainly responsible for the current state of violence in J & K. Adherence to historical equilibrium could have prevented conflict. In the case of J & K, historical equilibrium has been distorted to fortify hold on territory and in the process facilitate emergence of violent conflict.

Earned Sovereignty Approach

Paul R Williams and Francesa Jannoti Pecci have analyzed in detail the concept of earned sovereignty in the context of a bridge between sovereignty and self determination. "Earned sovereignty, as developed in recent state practices, entails the

conditional and progressive devolution of sovereign powers and authority from state to a sub state entity under international supervision[17]." "As an emerging conflict resolution approach, earned sovereignty is defined by three core elements: shared sovereignty, institution building, and a determination of final status. To increase the flexibility necessary to deal with the political fragilities of peace processes, and with the historical diversity of different conflicts, earned sovereignty may also encompass three additional elements: phased sovereignty, conditional sovereignty, and constrained sovereignty[18]." All these elements are expected to give increasing flexibility to peacemakers by providing a diverse array of options in the conflict resolution of demands for self determination.

Earned sovereignty is an emerging concept in conflict resolution. The approach is a way out of the current, exclusive obsession with sovereignty or self determination. Earned sovereignty seeks to bridge the divide, and could be defined as a means to an end- a process of transition, culminating in either statehood or heightened autonomy. Earned sovereignty is designed to create an opportunity for resolving sovereignty based conflicts by providing for the managed devolution of sovereign authority and functions from a state to a sub-state entity[19]. In some instances, the sub-state entity may acquire sovereign authority and functions sufficient to enable it to seek international recognition, while in others the sub-state entity may only acquire authority to operate within a stable system of heightened autonomy[20].

Shared sovereignty, institutional building and eventual determination of final status are described as the core elements and phased sovereignty, conditional sovereignty and constrained sovereignty are described as the optional elements[21]. Earned sovereignty approach has been correlated to conflict resolution processes in East Timor, Serbia and Montenegro, Northern Ireland, Bougainvillee and Papua New Guinea, Bosnia, Kosovo, Sudan, Israel/Palestine, and Western Sahara[22].

Earned sovereignty approach encompasses all the concepts and tries to blend the core elements with the optional elements in different combinations, contingent upon the local factors.

The concept of shared sovereignty could mean a provisional framework within which states and sub state entities share sovereign authority and functions. This could be an interim period or a permanent solution, depending how the relationship between the state and the sub-state entity evolves[23].

Institution building could be intended to create the capacity for the assumption of sovereign authority and functions necessary for the establishment of an autonomous entity, or a future independent state[24].

At some point during the conflict resolution process it will be necessary to determine the final status of the sub state entity. The options for final status range from substantial autonomy to full independence. This decision is generally made through either some sort of referendum or in structured negotiations, but invariably involves the political consent of the international community in the form of international recognition or support[25].

Phased sovereignty involves the measured devolution of sovereign functions and authority from the parent state or international community to the sub state entity during the period of shared sovereignty. Phased sovereignty can be useful to promote a smooth transition in those contexts where the adversarial claims of the parties do not allow for immediate devolution of powers. The timing and extent of the devolution of authority and functions may be correlated with the development of institutional capacity and/or conditioned on the fulfilment of certain benchmarks, such as democratic reform and the protection of human rights.

To promote effective implementation of power sharing through functioning democratic institutions, the transfer of sovereign authority to the sub state entity, or the determination of final status, may be conditioned upon the fulfilment of certain benchmarks. Some peace agreements condition the development of the process of earning sovereignty on the achievement of a satisfactory level of good governance and legal guarantees. This includes protection of human and minority rights, disarmament and demobilization, development of democratic institutions, institution of the rule of law, and promotion of regional stability.

Because the emergence of new states may be destabilizing to the immediate region, the sovereignty of the new state may sometimes be constrained by the international community. The potential for destabilization may arise either from the fact that because the state, even after a lengthy period of institution building, remains incapable of exercising effective authority, or because the new state's existence in and of itself creates a destabilizing political dynamic.

Constrained sovereignty involves the imposition of continued limitations on the sovereign authority and functions of the new state. Examples of such constraints

include prolonged international administrative and/or military presence, and limits on the right of the state to undertake territorial association with other states.

Earned Sovereignty Approach and J & K Conflict

Karen Heymann in a paper has analyzed in detail the possible legal application of the earned sovereignty approach for J & K. The paper evaluates the need for an earned sovereignty approach through the promotion of principles of right to self determination, in the context of international peace and security. J & K is seen as meeting the requirements of the concept of remedial secession. Detailing the concept of application of earned sovereignty approach the paper argues that earned sovereignty provides an ideal legal solution for J & K because it recognizes J & K's right to self determination and sovereign powers without secession. The concept envisages the granting of sub state status to J & K in order to gain recognition in the international community.

The thrust of the analysis is- corrections in the present existing political arrangements to an extent, stopping short of complete independence for the state of J & K. The concept of plebiscite is advocated but the scope of the results of any such democratic evaluation is constrained within the current territorial dynamics[26].

Earned sovereignty approach provides creative insights into the conflict resolution process in J & K. However one of the core elements in the earned sovereignty approach is the determination of final status. This is in essence one of the defining parameters of the J & K conflict. There are already UN resolutions in place pertaining to the determination of the final status. The UN resolutions confine the choice to two options of accession to India or Pakistan, leaving out the independence option. These resolutions have no scope for any accommodative, federal or confederal arrangement. Getting the parties to agree to an acceptable and realizable menu of options is perhaps the biggest obstacle in the current peace process between India and Pakistan.

Going by the public assertions of the heads of the states of India and Pakistan pertaining to a solution, we should have reached a stage where the options for determination of the final status could be realistically revised and set within achievable contours. The Pakistani President and successive Indian Prime Ministers have given explicit indications of out of box solutions. While the current Indian stand rules out redrawing of borders, the current Pakistani stand is replete with the terms

shared rule, joint, control, demilitarization and explicit indications of non insistence on implementation of the two option UN resolutions. These stands provide ample scope for resetting of final determination options, in consonance with the fulfilment of aspirations of the people of J & K as well as accommodation of realizable and achievable public postures. But these assertions have so far not percolated deep into the resolution process, and seem unlikely to percolate deep down in the near future.

The determination of final status assumes importance and primacy in the J & K conflict. Flexibility is constrained in the absence of ambiguity about the final status. None of the two states are willing to invest liberally in a solution whose final contours are yet to be agreed upon. India in particular would want to invest into a solution, only if it is final in nature, does not disturb the territorial equilibrium, and would ensure an end to violence in J & K and the spill over on to other parts of India. It is difficult for Pakistan to formally withdraw its claim once and for all over J & K or part of J & K in exchange for a solution which does not visibly alter the current status quo or significantly address its interests. The people of J & K would support any solution only if it is able to reflect the aspirations of the people to an optimally achievable level. In the long term the approval of the people of J & K is essential, especially for the Indian state. They are unlikely to invest in a solution and make peace with Pakistan at the cost of coercing the people of J & K into accepting a solution in the short term and leaving the option of restarting the armed struggle, open in the long term, with or without Pakistani support.

This makes the primary contouring of the solution, acceptable to all parties an imperative. If the final status or extent of final status is agreed upon, some aspects of the earned sovereignty approach and the treatment given to the conflict in the earned sovereignty concept become very relevant for the J & K conflict. The concept of shared sovereignty, building of institutions and measure of international facilitation would be very relevant to the resolution process in J & K.

Tracing "Solution" on the "Sovereignty Map"

Apart from the academic overlap that may exist between sovereignty and independence, the concept of independence and sovereignty are synonymous and overlap completely as per the existing psychological versions of independence and sovereignty in J & K. Traditional concept of sovereignty is an obsession with the people of J & K, fighting for right to self determination. The Indian state is equally

obsessive with its choice of words and explicitly prefers to treat sovereignty as a whole concept. It has preferred to allow the conflict to persist and has resisted the incorporation of the evolving concepts of sovereignty into the resolution process.

Sovereignty might be a legal concept or an international concept universally, in J&K it is also a psychological concept. Usage of the evolving concepts of sovereignty in a solution would be a psychological indicator of change and could facilitate striking a trade off between demands for self determination by the people of J & K and the counter attempts by the Indian state to maintain its territorial integrity.

"If sovereignty signifies a set of powers, claims-rights, liberties, and immunities, it may be both possible and frequently desirable to "unbundle" these attributes. In cases of autonomous, intrastate self government, for instance (e.g. the Basque region of Spain; or the weaker version proposed by Dalai Lama for Tibet), we might speak of specific attributes of sovereignty accorded to a polity that falls short of being a full fledged nation-state. The same could apply to those polities emerging, like Kosovo, through secession For it may be best (or prudent), from the perspective of international law, to grant partial, transitional, and thus conditional sovereignty (i.e. some of its attributes), "pending sufficient progress in building the institutions of justice, that warrant full recognition[27]"

In the context of the J & K conflict- we have two sub state entities of J & K S and J & K M and two states of India and Pakistan. There is a need to be able to trace a solution to the J & K conflict on the sovereignty map- a solution which enables India and Pakistan to exercise sovereignty over defined subjects in J & K and simultaneously constrains the exercise of sovereignty of the Indian and Pakistani state over defined subjects in J & K. The concepts of internal sovereignty of J & K (enabling J & K, constraining India and Pakistan), external sovereignty of J & K (enabling India and Pakistan and constraining J&K), and economic sovereignty of J&K (enabling J & K, constraining India and Pakistan) all could become permanent or interim parameters of the concept of shared sovereignty. This means unbundling of different attributes of sovereignty and according specific attributes of sovereignty to J&K. These concepts need to have the formal, legal endorsement of the Indian and the Pakistani state and drafting of new constitutions in J & K. The psychology of the concept of sovereignty is a relevant variable. Redistribution or devolution of power without reference to the sovereignty context is unlikely to have the same level of psychological deliverance.

The eclectic model attempts to redefine the macro attributes of sovereignty in a micro form of set of powers, claim-rights, liberties, immunities and independence of the government of J & K. The model is finally evolved out of realistic accommodation and redistribution of specific attributes of sovereignty between India, Pakistan, J&KS and J&KM within the constraints of sentiment and static territorial dynamics. Contents of a model arrived through evolution and defined in context of sovereignty provide peace makers with much greater advantage, than similar contents arrived through devolution and without a context of sovereignty.

Again, we posit that the eclectic model and the new state of affairs that it would usher in is achievable nationhood for the people of J & K and lasting peace for the people of India and Pakistan.

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Map of Jammu & Kashmir

Jammu & Kashmir: Facts and Figures

Region	Area(sq. kms)	Population (millions)
Jammu	26293	4.396
Kashmir	15948	5.441
Ladakh	59146	0.233
J&KS (total)	101387	10.070
J&KM*	13297	3.194
Northern Areas	72496	0.945
J&KM (total)	85793	4.139

* Excluding Northern Areas

Sources:

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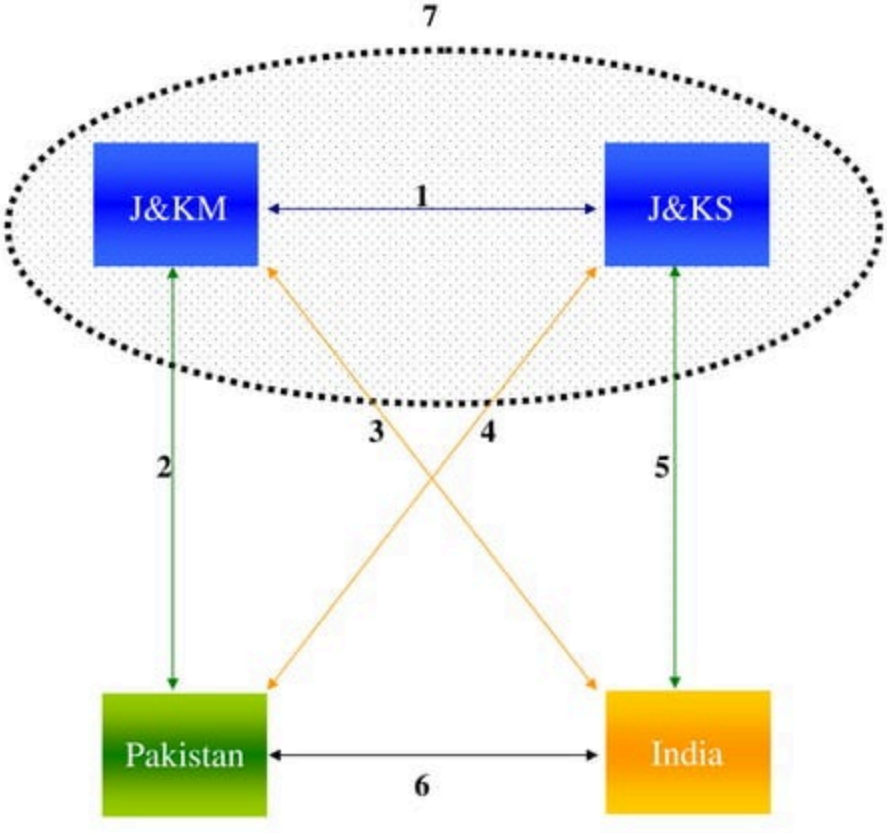
The New State of Affairs



The New State of Affairs

1) Relationship between J&KS and J&KM.
2) Relationship between J&KM and Pakistan.
3) Relationship between J&KM and India.
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